(24,652)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1915.

No. 420.

KNAUTH, NACHOD & KUHNE, PETITIONERS,

vs.

LATHAM & COMPANY ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

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a UNITED STATES OF AMERICA:

United States Circuit Court of Appeals, Fifth Judicial Circuit.

Pleas and proceedings had and done at a regular term of the United States Circuit Court of Appeals for the Fifth Circuit, begun on Friday, November 20th, A. D. 1914, at New Orleans, Louisiana, before the Honorable Don A. Pardee, Circuit Judge, and the Honorable Thomas S. Maxey and the Honorable Rufus E. Foster, District Judges.

KNAUTH, NACHOD & KUHNE, Appellants,
versus
LATHAM & COMPANY and Others, Appellees.

b Be it remembered, that heretofore, to-wit, on the 22nd day of May, A. D. 1914, a transcript of the record of the above styled cause, pursuant to an appeal from the District Court of the United States for the Southern District of Alabama, was filed in the office of the Clerk of the said United States Circuit Court of Appeals for the Fifth Circuit, which said transcript was filed and docketed in said Circuit Court of Appeals as No. 2651, as follows:

c U. S. Circuit Court of Appeals. Filed May 22, 1914. Frank H. Mortimer, Clerk.

United States Circuit Court of Appeals, Fifth Circuit.

No. 2651.

KNAUTH, NACHOD & KUHNE, Appellants,
against
LATHAM & COMPANY and Others, Appellees.

RECORD ON APPEAL.

Stevens, McCorvey & Dean, Solicitors for Knauth, Nachod & Kuhne, 503 City Bank Building, Mobile, Ala.

Briesen & Knauth, Counsel for Knauth, Nachod & Kuhne, 25 Broad Street, New York, N. Y.

Howe, Fenner, Spencer & Cocke, 708 Union Street, New Orleans, La., Solicitors for Latham & Company and American Surety Company.

Percy, Benners & Burr, Birmingham, Ala.; Rich & Hamilton, Mobile, Ala., Solicitors for Receivers and Trustees.

d *The Present Appeal.*

After the decision of the United States Circuit Court of Appeals for the Fifth Circuit on the former appeal (200 Fed. Rep., 403), the Appellees, Latham & Company and the Receivers and Trustee and the American Surety Company of New York, filed their respective motions to dismiss the cross-bill, or whatever it should be denominated, of the appellants Knauth, Nachod & Kuhne. Said motions were entertained by the District Court and finally granted and said bill dismissed both for want of jurisdiction and for want of equity. The decree was entered January 24, 1914, and Knauth, Nachod & Kuhne have appealed. The following is a copy of the record on this appeal and the first 138 pages thereof are the same as on the former appeal.

1 *Name of Court, Number and Style of Cause, and Names of Parties, etc.*

Circuit Court of the United States for the Southern District of Alabama, at Mobile, Alabama.

In Equity. No. 279.

CLARENCE E. FROST and WILLIAM S. LOVELL, as Receivers of Knight, Yancey & Company, Bankrupts, and Joe T. Gibson

vs.

LATHAM & COMPANY and Others, Original Complainants and Defendants under the Original Bill of Complaint Herein.

WILLIAM S. LOVELL, as Trustee in Bankruptcy of Knight, Yancey & Company, Bankrupts,

vs.

LATHAM & COMPANY, Complainant and Defendant under the Supplemental Bill Filed Herein.

KNAUTH, NACHOD & KUHNE et al.

vs.

LATHAM & COMPANY et al., Cross Complainants and Cross Defendants under the Original Cross Bill and Amended Cross Bill Filed Herein.

Said Knauth, Nachod & Kuhne on July 1, 1910, filed herein answer to the original bill of complaint as amended, and by leave of the court on said date per order duly entered herein filed
2 their cross bill. On December 20, 1910, said Knauth, Nachod & Kuhne, by leave of the court per order duly entered filed an amended cross bill. On March 21, 1911, the court made a decree herein striking out and from the file the answer filed by said Knauth, Nachod & Kuhne to the original bill as amended, and striking out

and from the file the cross bill and amended cross bill filed herein by them. From said decree Knauth, Nachod & Kuhne have sued out an appeal to the United States Circuit Court of Appeals for the Fifth Circuit, and the following is the transcript of the record and proceedings in the cause sent up on said appeal.

Original Bill of Complaint and Exhibits.

In the Circuit Court of the United States, Fifth Circuit, Southern District of Alabama.

In Equity. No. 279.

CLARENCE E. FROST and W. S. LOVELL, as Receivers of Knight, Yancey & Co., Bankrupts, and Joe T. Gibson, Complainants,
vs.
LATHAM & Co., a Partnership, et al., Respondents.

To the Honorable Judges of the United States Circuit Court in and for the Fifth Circuit, Southern District of Alabama:

Clarence E. Frost and W. S. Lovell, as receivers of Knight, Yancey & Company, bankrupts, and Joe T. Gibson, a resident of the Northern District of Alabama, as an unsecured creditor of said Knight, Yancey & Company, bankrupts, for himself and all other creditors who may become or make themselves parties to this proceeding, bring this, their bill of complaint, against Knight, Yancey & Company, a partnership, composed of J. W. Knight, residing at Decatur, Alabama, W. J. Yancey, residing at Memphis, Tennessee, R. H. Nesbit, residing at Spartanburg, South Carolina, and W. D. Nesbit, residing at Birmingham, Alabama, and Latham & Company, a partnership, the names of the partners composing the same being unknown to these complainants except that of Edmond
3 Latham and Pierre Walther, all of whom reside at Havre, in the republic of France, the said Pierre Walther, Edmond Latham, the steamship "Meltonian" now in the navigable waters of the Mobile river at Mobile, Alabama, Arthur Parker as master of the steamship "Meltonian," whose residence is unknown to these complainants but who is a non-resident of the State of Alabama, Frederick Leyland Steamship Company, Ltd., 1905, of Liverpool, a corporation organized and domiciled outside of the State of Alabama, Elder-Dempster & Co., a partnership, the names and residences of the partners composing which are unknown to these complainants, and the Louisville & Nashville Railroad Company, a corporation organized under the laws of the State of Kentucky and doing business in Mobile county, in the State of Alabama, and elsewhere, including the city of Pensacola in the county of Escambia, in the State of Florida, respondents, and show as the basis for the relief hereinafter prayed the following state of facts:

First.

That all of the individual parties complainant and respondent above named are over twenty-one years of age and their places of residence are as above stated; that on, to-wit, April 21, 1910, the above named Knight, Yancey & Company, a partnership composed as aforesaid, were duly adjudicated bankrupts by order of the District Court of the United States for the Northern District of Alabama, Northeastern Division, pursuant to a petition pending in said court for the adjudication of said partnership to be a bankrupt pursuant to the acts of congress relating to bankruptcy, and that the administration of said bankrupt estate is proceeding in said court; that thereafter on, to-wit, April 21, 1910, complainants Clarence E. Frost and W. S. Lovell were by order of said court, duly made and entered, appointed receivers of the estate of said bankrupts, a copy of which said order is hereto attached as Exhibit "A" and prayed to be taken as a part of this bill; that pursuant to their said appointment complainants qualified as such receivers and entered into bonds in the aggregate sum of two hundred thousand dollars ($200,000.00), as required by the order of said court, and that said complainants have entered upon the discharge of their duties as such receivers and have been and are now actively engaged in the discharge of their
4 duties as such in the effort to collect whole and preserved the estate of said bankrupts. Orators further allege that at the time said Knight, Yancey & Company were adjudicated bankrupts, as herein before alleged, said Knight, Yancey & Company were indebted to your orator, Joe T. Gibson, in the sum of fifteen thousand dollars ($15,000.00) for cotton sold and delivered to said Knight, Yancey & Company, which said debt due to orator Joe T. Gibson is still due and unpaid and wholly unsecured.

Second.

Your orators further show to the court that said Knight, Yancey & Company were, prior to the adjudication of bankruptcy aforesaid, largely engaged in the purchase of cotton at various points in the cotton producing sections of the United States and exporting said cotton to various ports in foreign countries; that the principal office and place of business of said Knight, Yancey & Company was at Decatur, Alabama; that said Knight, Yancey & Company having become involved in financial difficulties issued a large number of forged and fraudulent bills of lading purporting to be for cotton actually shipped, among which forged and fraudulent bills of lading were bills of lading for, to-wit, seventy-eight hundred (7,800) bales of cotton, to which said bills of lading for said seventy-eight hundred bales of cotton drafts were attached, which drafts were drawn by Knight, Yancey & Company, and of which drafts said Latham & Company became the owners; complainants aver and charge that said drafts were for sums of money which approximated the market value of said seventy-eight hundred bales of cotton at the time the

same were drawn, and approximated in amount the sum of six hundred thousand dollars ($600,000.00); complainants aver and charge that by the purchase or acceptance of said drafts, to which said forged and fraudulent bills of lading were attached, Latham & Company became and were creditors of said Knight, Yancey & Company in a large sum of money, to-wit, the sum of six hundred thousand dollars ($600,000.00), and were such creditors on, to-wit, April 14, 1910, and on all other dates referred to in this bill; that on, to-wit, April 14, 1910, the said Pierre Walther, acting for said Latham & Company, demanded of said Knight, Yancey & Company the delivery to said Latham & Company of true and regular bills
5 of lading for, to-wit, the aggregate of seventy-eight hundred bales of cotton, in payment and satisfaction of the aforesaid indebtedness of said Knight, Yancey & Company to said Latham & Company; complainants charge that on said date, and all other dates mentioned in this bill, said Knight, Yancey & Company were insolvent and that on all of said dates said Latham & Company and said Pierre Walther had reasonable cause to believe that said Knight, Yancey & Company were insolvent; that on, to-wit, April 14, 1910, Knight, Yancey & Company transferred to Latham & Company, who were then creditors of said Knight, Yancey & Company, a portion of the property of said Knight, Yancey & Company, to-wit, seventy-eight hundred bales of cotton, in payment of said debt of Knight, Yancey & Company to Latham & Company, with the intent to prefer said Latham & Company over the other creditors of said Knight, Yancey & Company, and that the effect of said transfer will be to enable said Latham & Company to obtain a greater percentage upon their debt due them from said Knight, Yancey & Company than any other unsecured creditor of said Knight, Yancey & Company, and that said Latham & Company had reasonable cause to believe that by said transfer said bankrupts intended to prefer said Latham & Company over the other creditors of said bankrupts; that the transfer aforesaid was made by said Knight, Yancey & Company to said Latham & Company within four (4) months prior to the time said Knight, Yancey & Company were adjudicated bankrupts as aforesaid. Your orators are advised by counsel and therefore charge that said transfer of said seventy-eight hundred bales of cotton to said Latham & Company by said Knight, Yancey & Company was, under the acts of congress relating to bankruptcy, a preferential transfer which should be avoided and that said seventy-eight hundred bales of cotton or the value thereof in equity and good conscience belong to said bankrupt estate and should be administered for the benefit of the creditors of said bankrupts; your orators further charge that at the time said Knight, Yancey & Company were adjudicated bankrupts they were indebted to firms, persons and corporations who had no security for their debts, in a sum aggregating five million dollars ($5,000,000.00) or more.

Third.

6 Your orators further charge and show that a large portion of said seventy-eight hundred bales of cotton, transferred to said Latham & Company by said Knight, Yancey & Company, have been concentrated at the port of Mobile and that the number of, to-wit, forty-two hundred (4,200) bales of such cotton have been or are now being stowed and loaded under bills of lading issued by Elder, Dempster & Co. to Knight, Yancey & Company as shippers consigning said cotton to the order of the shippers at Havre, France, "Notify Latham & Co." into the steamship "Meltonian" which is lying in the navigable waters of the Mobile river at Mobile, as aforesaid, and which steamship is owned by said Frederick Leyland Steamship Co., Ltd., 1905, of Liverpool, but in which said Elder-Dempster & Co. claim some right and interest to orators unknown; that the said stowing and loading of said ship is being rapidly completed and when so completed orators are informed and believe and upon such information and belief allege that said steamship will proceed at once to Havre, France, with said cotton for the purpose of their delivering the same to said Latham & Company; your orators are advised that if said cotton is permitted to be taken beyond the jurisdiction of the courts of the United States the same will become lost to the creditors of said bankrupt estate of Knight, Yancey & Company. Orators hereto attach as Exhibit "B," which they pray to be taken as a part of this bill, a table showing the identifying marks of said forty-two hundred bales of cotton which have been loaded or are now being loaded into said steamship "Meltonian" as aforesaid. Orators are further informed and therefore charge that a large part of said cotton has been loaded into said ship since the agents of the owners of said ship had actual knowledge of the fact that said Knight, Yancey & Company had been adjudged bankrupts.

Fourth.

Your orators further charge and aver that said Latham & Company have caused to be assembled at Pensacola, Florida, an aggregate of, to-wit, thirty-seven hundred and two (3,702) bales of said cotton so preferentially transferred to Latham & Company by said Knight-Yancey & Company, a table showing the identifying marks of which thirty-seven hundred and two bales of cotton so assembled at Pensacola, Florida, is hereto attached as Exhibit "C" and is further
7 prayed to be taken as a part of this bill; your Orators further charge that said thirty-seven hundred and two bales of cotton at Pensacola, Florida, are in the possession of the respondent Louisville & Nashville Railroad Company; your Orators further charge and aver that it is the purpose of said Latham & Company at once to remove said thirty-seven hundred and two bales of cotton from without the jurisdiction of the courts of the United States and ship the same to the port of Havre, France, or to some other foreign port, and that if so shipped said cotton and the value thereof will be lost to said bankrupt estate to which in equity and good conscience the same belong.

Fifth.

Orators further aver and show that by said order of said District Court for the Northeastern Division of the Northern District of Alabama appointing them Receivers as aforesaid they were empowered to sue for and recover the assets of said bankrupt estate wherever the same might be situated, and your orators further show that on, to-wit, April 23, 1910, they applied to said District Court for the Northeastern Division of the Northern District of Alabama for express direction and authority to institute this suit, a copy of which application is hereto attached as Exhibit "D" and prayed to be taken as a part of this bill; that on, to-wit, April 23, 1910, by the order of the Honorable William I. Grubb, Judge of the District Court for the Northeastern Division of the Northern District of Alabama, your Orators were expressly authorized, directed and empowered to institute this suit; a copy of said last mentioned order is hereto attached as Exhibit "E" and prayed to be taken as a part hereof.

Sixth.

Your orators submit themselves to the jurisdiction of this court and offer to do equity and to perform any and all conditions that the Court may impose for the granting of the relief herein prayed or any part thereof.

Seventh.

Your orators further charge and aver that in order to prevent the removal of said cotton so transferred by said Knight-Yancey
8 & Company to said Latham & Company from beyond the jurisdiction of the courts of the United States, and in order to compel the respondents Latham & Company, Elder-Dempster & Company, Frederick Leyland Steamship Company, Ltd., 1905, of Liverpool, to answer this bill it is necessary that the same should be seized under the orders of this court and held within the jurisdiction of this court pending the final hearing of this bill.

The premises considered, your orators pray that this court will take jurisdiction of this their bill and will make parties respondent hereto said Knight, Yancey & Company, a partnership as aforesaid, said Latham & Company, and Edmond Latham and Pierre Walther, partners of said firm, said Arthur Parker as master aforesaid, said Frederick Leyland Steamship Company, Ltd., 1905, of Liverpool, a corporation as aforesaid, said J. W. Knight, W. J. Yancey, W. D. Nesbit and R. H. Nesbit, Elder-Dempster & Company, and said Louisville & Nashville Railroad Company, a corporation aforesaid; that the subpœnas of this court issue to said parties respondent and that the same may be served upon such of them as may be found within the jurisdiction of this court, and that as to such of said respondents as are without the jurisdiction of this court publication may be made citing them to appear and defend this bill as required by the orders of this court.

Orators further pray that the transfer by said Knight-Yancey & Company to said Latham & Company of said seventy-eight hundred bales of cotton be held and declared to be a preferential transfer and void within the meaning of the Acts of Congress relating to Ban-ruptcy, and the said Latham & Company be required on the final hearing hereof to deliver said cotton to your Orators or to account to them for the value of the same; that this Court's writ of injunction issue, restraining and enjoining, pending the final hearing of this bill, the said Latham & Company and the partners composing said firm, said Pierre Walthers, Edmond Latham, said Arthur Parker as Master of the Steamship "Meltonian," said Louisville & Nashville Railroad Company, said Frederick Leyland Steamship Company, Ltd., 1905, of Liverpool, and the said Elder-Dempster & Company, their agents, servants, attorneys and employees, and all other persons from removing any part of said cotton which
9 is now within the jurisdiction of this court; that in aid of this suit and to compel said non-resident respondents to answer this bill, the Marshal of this District be directed to seize, attach and sequester any part of said seventy-eight hundred bales of cotton so transferred to said Latham & Company by said Knight-Yancey & Company which may be found within this district, and that he be particularly directed to seize and cause to be unloaded such portion of said forty-two hundred bales of cotton, shown by Exhibit "B" hereto attached, or consigned by said bankrupts to Latham & Company, and the same to hold pending the further orders of this court, and that he be likewise directed to seize any portion of said forty-two hundred bales of cotton, shown by said Exhibit, and all other cotton consigned by said bankrupts to Latham & Company, which is within this district which has not been loaded into said Steamship "Meltonian" and the same to hold pending the further orders of this Court; that the said Louisville & Nashville Railroad Company be enjoined from removing or disposing of any part of said thirty-seven hundred and two bales of cotton in its possession at Pensacola, Florida, and all other cotton consigned by said bankrupts to Latham & Company, until the further orders of this court and that it be directed to deliver the same to whomsoever this court may designate for the purpose of receiving the same and holding the same pending the final hearing of this bill; that the said Arthur Parker, as Master aforesaid, be required by the order of this court to permit the unloading of such cotton as may have been loaded into the said ship, and the removal of it by the Marshal as aforesaid, and be enjoined from causing said vessel to sail until said cotton has been unloaded; and they pray for such other, further and general relief as in equity and good conscience they may be entitled to.

W. S. LOVELL,
CLARENCE E. FROST,
Receivers in Bankruptcy of Knight, Yancey & Company.
JOE T. GIBSON,
By PERCY, BENNERS & BURR, *Att'ys.*
PERCY, BENNERS & BURR,
RICH & HAMILTON,
SANDERS, DE FOUR & DE FOUR,
Solicitors for said Complainants.

10 FOOT-NOTE.—Respondents are each required to answer the foregoing bill from paragraphs one to seven, both inclusive, but not under oath.

PERCY, BENNERS & BURR,
RICH & HAMILTON,
SANDERS, DE FOUR & DE FOUR,
Solicitors for Complainants.

STATE OF ALABAMA,
Mobile County:

W. S. Lovell being duly sworn deposes and says, that he is one of the complainants to the foregoing bill and that the averments of said bill are true as therein stated.

W. S. LOVELL.

Subscribed and sworn to before me this the 29th day of April, A. D. 1910.

HELEN H. SMITH,
Notary Public, Mobile Co., Ala.

EXHIBIT "A."

In the District Court of the United States for the Northern District of Alabama.

In Bankruptcy.

In re KNIGHT, YANCEY & COMPANY, a Partnership, Bankrupt.

This cause coming on to be heard upon the application for the appointment of a receiver of the said Knight, Yancey & Company, and it appearing that the said partnership of Knight, Yancey & Company has been by the order of this court adjudged bankrupt, and the petitions being presented to the court, and certain creditors of the bankrupt appearing by counsel and urging the appointment of a receiver at this time, and there being no one opposing the granting of this order; on consideration whereof

11 It is ordered, adjudged and decreed that the application for a receiver of said bankrupt and its estate be, and the same is hereby granted.

And it appearing to the court that Clarence E. Frost, of Athens, Alabama, and Willim S. Lovell, of Birmingham, Alabama, are suitable persons to act as receivers in this cause:

It is ordered, adjudged and decreed that the said Clarence E. Frost and the said William S. Lovell be and they are hereby appointed receivers of the said Knight, Yancey & Company, bankrupts, and they are hereby authorized and empowered and instructed to take possession of all the estate, property and assets of said bankrupts wheresoever found, including choses in action, and all books and

papers of said bankrupt, and the same to safely keep and hold subject to the orders of this court.

And it being represented to the court that a large part of said estate consists of cotton on which insurance should be carried:

It is ordered that said receivers be, and they hereby are authorized to effect and carry insurance on such cotton of said estate as in their judgment should be carried.

And it being further represented that the property of the estate is widely scattered and that it had branch offices at one or more places in Alabama, and elsewhere,

It is further ordered that the said receivers be, and they are hereby authorized and empowered to go to such reasonable expense as may be proper to ascertain, locate and secure possession of any property and assets of said bankrupt and to employ such counsel and agents, clerks and other employees as may be reasonably necessary to enable such receivers to ascertain, locate and secure the possession of the books, papers, properties or other estate of said bankrupt.

And the said receivers are further authorized and empowered to collect all debts and claims due to said bankrupt, and they are further authorized and empowered to institute and prosecute such suits, actions and all other proceedings at law and in equity as they may be, by counsel, advised, and which in the judgment of the receivers, should be instituted and prosecuted in their names as receivers; to properly protect or conserve the interests of said estate, or its creditors,

And it being made to appear to the court that certain cotton, or cotton warehouse receipts, of said partnership have been hy-
12 pothecated as security for debts, and that the same were deposited as security for debts, and that the same were deposited as security with the understanding or agreement that the said cotton or receipts would be sold upon the order of said partnership; and it appearing to the court that it may be to the interest of said estate and its creditors to vest in the receivers power and authority to order out part or parts of said cotton or receipts where in special cases the same should be done:

It is further ordered that said receivers be, and they are hereby fully authorized and empowered, in special cases, where in their judgment, the best interests of the estate and its creditors will be subserved thereby to order the sale of any cotton, or cotton receipts at the then market price therefor, which may have been hypothecated, or pledged, by said partnership, or be held by creditors as security for a bona fide indebtedness, and thereby to conserve the equity or equities of said partnership or the bankrupt estate in such cotton or cotton receipts, and in proper cases they may in order to effect such sales recognize the validity of the claims of a party or parties holding said cotton or cotton receipts, or any part or parts thereof.

It is further ordered that any and all creditors of said partnership who hold cotton or cotton receipts or collaterals be, and they are restrained from the selling of the same until or unless they give said receivers or one of them at least three days' notice of the purpose to sell, and of the time and place of sale.

It is further ordered that before entering upon the discharge of their duties said receivers shall make and enter into bond, conditioned and payable as provided by law, in the sum of two hundred thousand dollars, with surety or sureties to be approved by the judge or clerk of this court.

And said receivers may file a joint bond in said sum, or they may, at their election make and file separate bonds each in the sum of one hundred thousand dollars, conditioned and payable and with surety to be approved as aforesaid.

And upon the filing of said joint bond or said separate bonds, and the approval thereof, as aforesaid, said receivers are fully authorized hereby to enter upon the discharge of their duties with all the rights, powers and authority in this order given them.

13 And it is further ordered that all managers, agents, and employees of said partnership whether at its general office or any local or branch office, or agency of said Knight, Yancey & Company, and all persons holding or in possession of any of the books, papers, property, estate or effects of said partnership be, and they are hereby ordered to deliver possession of same to said receivers on demand.

Done in open court, this 21st day of April, 1910.

(Sig.) W. I. GRUBB,
United States District Judge.

No. 1665.

UNITED STATES OF AMERICA,
Northern District of Alabama, Northeastern Division:

I, Charles J. Allison, clerk of the District Court of the United States of America in and for said Division of said District, do hereby certify that the foregoing is a true, full, and complete copy of the order made by W. I. Grubb, judge of said court, appointing Clarence E. Frost of Athens, Ala., and William S. Lovell of Birmingham, Ala., receivers of the estate of Knight, Yancey & Co., in bankruptcy as fully as the same does appear of record in my office.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of said court at office in the city of Huntsville, in said District, this 21st day of April, 1910.

[SEAL.] CHAS. J. ALLISON,
Clerk of the U. S. District Court.

EXHIBIT "B."

Shipped to Order Notify Latham & Co., Havre, France, per S. S. "Meltonian," by Knight, Yancey & Co.

1910.		
	100	R S E R
	100	Q S H O
14	100	R S O T
	100	Q S A N
	100	P S R I
	100	R S E N
	100	R S N I
	100	Q S A D
	100	Q S D W
	100	P S O A
	100	Q S U S
	100	P S K O
	100	P S O P
	100	P S E V
	100	P S I Z
	100	P S O L
	100	P S B A
	100	P S F A
	100	P S G E
	100	P S E N
	100	P S O G
	100	R S X A
	100	R S N U
	100	Q S O T
	100	R S L X
	100	Q S G Q
	100	Q S Y T
	100	Q S E L
	100	P S D Y
	100	P S E X
	100	P S C A
	100	P S P L
	100	Q S O N
	100	Q S O H
	100	Q S M E
	100	P S E A
	100	P S S E
	100	P S D A
	100	P S T W
	100	P S L I
	100	Q S D C
	100	R S I A
	4,200	bales.

15

Exhibit "C."

Latham Cotton Held by L. & N. on Through Bills Lading at Pensacola and which Knight Gave Them for Bogus Bills.

R S D I	50	R S S B	75
R S R E	50	R S I C	15
Q F A B	85	R S A T	100
Q S C P	75	R S I C	85
Q S L A	75	Q S G C	60
Q S T R	40	P Z L U	70
Q S S C	50	P R I K	80
Q S I A	50	Q S L L	15
Q A R I	85	Q S T R	60
Q S A T	75	P L E N	65
Q S G C	40	P U R X	85
Q M C E	65	P I N S	85
R S O M	80	P S H E	80
R S C I	50	R S D I	50
R S C I	50	R S L W	50
Q S L L	42	R S L W	50
	962		1,025
			962
			1,987

	PALS	23
PINT or	PENT	40
	OPRA	15
	POST	50
	OATS	81
	PLAT	54
	FUME	59
	OURY	46
	PILL	9
	FUSE	57
	KYC	2
	XX	29
		465

R S P Z	100
R S C O	100

16

R S M X	100
R S E A	100
Q S I Y	100
R S P E	100
	600

R S B L	100
Q S U R	100
Q S A T	25
Q N C E	20
Q S L L	15
R S O M	20
Q S T R	60
R S R E	50
Q S A T	
B	100
P S H E	20
P R I K	20
P W A L	100
	650

EXHIBIT "D."

In the District Court of the United States for the Southern District of Alabama, Northeastern Division

In the Matter of KNIGHT, YANCEY & COMPANY, Bankrupts. In Bankruptcy.

Petition of Receivers.

To the Honorable William I. Grubb, Judge of said Court:

Your petitioners, C. E. Frost and W. S. Lovell, receivers in bankruptcy of said bankrupt, show to the court the following state of facts:

First.

17 Your petitioners are informed and believe, and upon such information state that the bankrupt was on, to-wit, April 16th, 1910, indebted to Latham & Company, a partnership doing business in Havre, France, in a sum in excess of three hundred thousand dollars ($300,000.00) and had been so indebted for more than sixty days; that on said date, to-wit, April 16th, 1910, said bankrupt was insolvent, which fact was known to it, and that said Latham & Company had reasonable cause to believe that said Knight, Yancey & Company were insolvent; that on, to-wit April 16th, 1910, Knight, Yancey & Company transferred to said Latham & Company a portion of their property, to-wit, seven thousand eight hundred (7,800) bales of cotton, in payment and satisfaction of the aforesaid indebtedness of said bankrupt, to said Latham & Company, and that such transfer was made and received with intent to prefer both on the part of said bankrupt and said Latham & Company, said Latham & Company over the other creditors of said bankrupt.

These petitioners are advised, and, therefore, aver and charge that said cotton so transferred rightfully belongs to said bankrupt estate, and that these receivers should be empowered to recover the same.

Second.

Petitioners are informed and believe, and, therefore, state that said cotton had been loaded on board the ship Meltonian, at the port of Mobile, and that it is expected that said ship will sail on tomorrow, April 24th, 1910. Said Latham & Company have no property within the jurisdiction of this court, or within the United States, so far as petitioners are informed and believe and therefore, state — charge; and petitioners further show to the court that unless they are permitted to sue for, recover and receive said cotton, and to enjoin or restrain the removal of same, said cotton will be lost to said estate.

The premises considered, petitioners pray that they be authorized and empowered to take any steps and action that they may be advised is proper, outside of the jurisdiction of this court, for the purpose of preventing the removal of said cotton, and for the purpose of recovering the same, and particularly pray that they be authorized and directed to institute suit in the District Court of the United States for the Southern Division of Alabama, to set aside said
18 transfer and to recover said cotton, and to enjoin and restrain its removal from said port of Mobile, and for such other and further relief and orders in the premises as may be appropriate.

W. S. LOVELL,
C. E. FROST,
Receivers in Bankruptcy of Knight, Yancey & Company,
By PERCY, BENNERS & BURR,
Their Attorneys.

STATE OF ALABAMA,
Jefferson County:

Augustus Benners, being duly sworn, says that he is one of the attorneys for said receivers and is authorized to make this affidavit for them, and that the averments of the foregoing are true as therein stated.

AUGUSTUS BENNERS.

Subscribed and sworn to before me this April 23rd, 1910.
[SEAL.]
PAUL D. THOMAS,
Notary Public.

Endorsed: Filed April 23rd, 1910, at 4:20 p. m. Chas. J. Allison, Clerk.

A true copy.

CHAS. J. ALLISON,
Clerk U. S. District Court.

hold pending the sailing on her present voyage from the port of Mobile of the steamship Meltonian, and if said steamship shall not carry any portion of said sequestered cotton, then the clerk
21 of the court shall immediately pay the full sum aforesaid without deduction of any kind to the master of the said steamship Meltonian or his solicitors in full settlement of all claim for freight which the said steamship may have for and on account of the consignment of said cotton as cargo in said ship. If the said steamship Meltonian upon sailing aforesaid, shall carry a part but not all of said cotton, then the clerk shall pay out of said deposit, to said master of said steamship, or his solicitors, a sum ascertained by the number of pounds of cotton not carried by said steamship at the rate per cent per hundred pounds set forth in the bills of lading for said cotton not carried, and the balance or difference shall pay to complainants or their solicitors, and if said steamship upon sailing as aforesaid shall carry all of said cotton, then the clerk shall pay said entire sum to complainants or their solicitors of record.

Third.

This order and decree shall be without prejudice to complainants' right to apply for injunctive or other process under this bill directed to the Louisville & Nashville Railroad Company.

Fourth.

That defendants or any of them may release said cotton from said seizure when and if made, at any time thereafter upon furnishing and filing with the clerk a forthcoming bond with good and solvent security, approved by the court or the clerk thereof, in the sum of three hundred and twenty-five thousand ($325,000.00) dollars, conditioned, that if the obligors on said bond shall have forthcoming and deliver within sixty days from the date of any final decree of this court such cotton to the proper officers of the court, or shall pay and satisfy such decree as may be rendered in the cause, then the obligation to be null and void, otherwise to remain in full force and effect.

This cause is reserved for further orders and decrees.

Signed at 4 o'clock p. m. this May 3rd, 1910.

HARRY T. TOULMIN, *Judge.*

Filed and duly entered May 3, 1910.

RICHARD JONES, *Clerk.*

22 *Writ of Sequestration and Marshal's Return.*

UNITED STATES OF AMERICA:

Circuit Court of the United States for the Southern District of Alabama.

In Equity. No. 279.

CLARENCE E. FROST and W. S. LOVELL, as Receivers of Knight, Yancey & Company, Bankrupts, and Joe T. Gibson
vs.
LATHAM & COMPANY and Others.

To the President of the United States, to the Marshal of said District or any of His Deputies, Greeting:

Pursuant to the decree rendered by this honorable court in this cause on May 3rd, A. D. 1910, you are hereby commanded to seize, attach, sequester and hold, pending the further orders of the court herein, the four thousand two hundred (4,200) bales of cotton stowed in the steamship Meltonian and on the wharf to be loaded into her hold consigned by Knight, Yancey & Company to the order of Knight, Yancey & Company at Havre, France, "Notify Latham & Company" under bills of lading issued by said steamship Meltonian, said cotton being further identified by the marks thereon described in Exhibit "B" to the bill of complaint herein, a copy of which exhibit is hereto attached.

All persons are hereby strictly enjoined from interference with or preventing said marshal from executing this writ.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, and the seal of said Circuit Court of the United States for the Southern District of Alabama, this the 4th day of May, A. D. 1910.

[SEAL.]

RICHARD JONES, *Clerk.*

Shipped to Order Notify Latham & Co., Havre, France, per S. S. "Meltonian," by Knight, Yancey & Co.

	100	R S E R
	100	Q S H O
	100	R S O T
	100	Q S A N
	100	P S R I
23	100	R S E N
	100	R S N I
	100	Q S A D
	100	Q S D W
	100	P S O A
	100	Q S U S
	100	P S K O
	100	P S O P
	100	P S E V
	100	P S I Z
	100	P S O L
	100	P S B A
	100	P S F A
	100	P S G E
	100	P S E N
	100	P S O G
	100	R S X A
	100	R S N U
	100	Q S O T
	100	R S L X
	100	Q S G Q
	100	Q S Y T
	100	Q S E L
	100	P S D Y
	100	P S E X
	100	P S C A
	100	P S P L
	100	Q S O N
	100	Q S O H
	100	Q S M E
	100	P S E A
	100	P S S E
	100	P S D A
	100	P S T W
	100	R S L I
	100	Q S D C
	100	R S I A

4,200 bales.

Received in office May 4, 1910, and executed May 4 to 9, 1910,
by taking into my custody the said 4,200 bales of cotton,
24 partly from the steamship Meltonian and part from the docks,
some of said cotton being in bad condition and marks indistinguishable.

G. B. DEANS,
U. S. Marshal.

Returned and filed May 9, 1910.

RICHARD JONES, *Clerk.*

Notice to Arthur Parker of Amendment to Original Bill of Complaint.

In the Circuit Court of the United States for the Southern District of Alabama, Southern Division.

In Equity. No. 279.

CLARENCE E. FROST and WILLIAM S. LOVELL, Receivers in Bankruptcy of Knight, Yancey & Co., Bankrupts, Complainants,
vs.
LATHAM & COMPANY, a Partnership, et als., Respondents.

To Messrs. Pillans, Hanaw & Pillans, Solicitors for Arthur Parker et als.:

We enclose herewith a copy of an amendment to the bill in the above styled case, pending in the Circuit Court of the United States, which will be proposed tomorrow morning at ten o'clock.

PERCY, BENNERS & BURR,
RICH & HAMILTON,
Solicitors for Complainants.

We accept service of the foregoing this the fifth day of May, A. D. 1910.

PILLANS, HANAW & PILLANS,
Solicitors for Arthur Parker, Master of the Steamship "Meltonian."

Filed May 5, 1910.

RICHARD JONES, *Clerk.*

25 *Order Allowing Complainant- to Amend Bill of Complaint.*

In the Circuit Court of the United States for the Southern District of Alabama, Southern Division.

In Equity. No. 279.

CLARENCE E. FROST and WILLIAM S. LOVELL, Receivers in Bankruptcy of Knight, Yancey & Co., Bankrupts, and Joe T. Gibson, Complainants,

vs.

LATHAM & COMPANY, a Partnership, et als., Respondents.

The application of the complainants to amend their bill, filed herein, being presented to the court, and it appearing to the court that notice of such application has been given to all parties who have appeared in said cause:

It is ordered, adjudged and decreed that said amendment be and the same is hereby allowed.

May 5th, 1910.

HARRY T. TOULMIN,
Judge Circuit Court of the United States for the Sou. Dist., Sou. Div. of Alabama.

Filed and entered May 5, 1910.

RICHARD JONES, *Clerk.*

Amendment to Original Bill of Complaint.

In the Circuit Court of the United States for the Southern District of Alabama, Southern Division.

In Equity. No. 279.

CLARENCE E. FROST and WILLIAM S. LOVELL, Receivers in Bankruptcy of Knight, Yancey & Co., Bankrupts, and Joe T. Gibson, Complainants,

vs.

LATHAM & COMPANY, a Partnership, et als., Respondents.

Come the complainants and pray the leave of the court to amend their bill as follows: By adding a paragraph to be numbered four and a half, to be inserted between the fourth and fifth para-
26 graphs of the bill, which paragraph shall read as follows:

"Your orators are informed and believe and on such information and belief charge that there are persons other than said Latham & Company who claim some right, title or interest in said seventy-eight hundred (7,800) bales of cotton, or portions thereof, and that the names of such other persons, firms or corporations are unknown to these complainants; and that the nature of any such right, title or interest claimed in and to said seventy-eight hundred (7,800) bales of cotton is unknown to these complainants."

Complainants further pray leave to amend the prayer of their bill by adding at the end thereof the following:

"That all persons, firms or corporations who claim any right, title or interest in and to said seventy-eight hundred (7,800) bales of cotton be made parties defendants to this bill and be cited by publication to answer this bill."

CLARENCE E. FROST,
WM. S. LOVELL,
JOE T. GIBSON,
Complainants,
By RICH & HAMILTON.
PERCY, BENNERS & BURR,
RICH & HAMILTON,
Solicitors for Complainants.

STATE OF ALABAMA,
Mobile County:

William S. Lovell being duly sworn doth depose and say that the averments of the foregoing amendment and of the bill as proposed to be amended are true as therein stated, and that he as receiver of Knight, Yancey & Company, bankrupts, is one of the parties complainant to the bill.

WILLIAM S. LOVELL.

Subscribed and sworn to before me this 5th day of May, 1910.
RICHARD JONES, JR.,
Deputy Clerk.

Filed by leave of the court May 5, 1910.
RICHARD JONES, *Clerk.*

27 *Motion of Complainant- to Modify Decree Directing Issuance of Writ of Sequestration.*

In the Circuit Court of the United States for the Southern District of Alabama, Southern Division.

CLARENCE E. FROST and WILLIAM S. LOVELL, Receivers in Bankruptcy of Knight, Yancey & Co., Bankrupts, and Joe T. Gibson, Complainants,

vs.

LATHAM & COMPANY, a Partnership, et als., Respondents.

Come the complainants and move the court to modify the order made in this cause on May 3rd, 1910, by striking therefrom the fourth paragraph thereof.

WM. S. LOVELL,
CLARENCE E. FROST,
Receivers in Bankruptcy of Knight, Yancey & Co.;
JOE T. GIBSON,
Complainants,
By PERCY, BENNERS & BURR, *Att'ys.*
PERCY, BENNERS & BURR,
RICH & HAMILTON,

To Messrs. Pillans, Hanaw & Pillans, Solicitors for Arthur Parker, Master of the Steamship "Meltonian":

Please take notice that the above motion will be presented to the court at 12 o'clock m. this 6th day of May, 1910.

PERCY, BENNERS & BURR,
RICH & HAMILTON,
Solicitors for Complainants.

Filed May 6, 1910.

RICHARD JONES, *Clerk.*

28 *Decree Modifying Decree Directing Issuance of Writ of Sequestration.*

In the Circuit Court of the United States for the Southern Division of the Southern District of Alabama, Fifth Circuit.

In Equity. No. 279.

CLARENCE E. FROST and W. S. LOVELL, as Receivers of Knight, Yancey & Company, Bankrupts, and Joe T. Gibson, Complainants,
vs.
LATHAM & COMPANY, a Partnership, et al., Respondents.

This cause coming on to be heard on the motion of the complainants filed herein this May 6th, 1910, for a modification of the decree of this court entered in said cause on May 3rd, 1910, upon consideration thereof, it is ordered, adjudged and decreed that the same be and it is hereby granted and said paragraph "Fourth" of said decree is hereby stricken therefrom, but without prejudice to the right of any person claiming an interest in the subject matter of the controversy to apply to the court for a release of the cotton involved in the suit from the custody of the marshal.

Made this May 6th, 1910, at 12:30 o'clock p. m.

HARRY T. TOULMIN, *Judge.*

Filed and entered May 6, 1910.

RICHARD JONES, *Clerk.*

Petition of Latham & Company for Leave to Bond Cotton.

Circuit Court of the United States, Fifth Circuit and Southern District of Alabama.

In Equity. No. 279.

CLARENCE E. FROST and W. S. LOVELL, as Receivers of Knight, Yancey & Company, Bankrupts, and Joe T. Gibson, Complainants,
vs.
LATHAM & COMPANY, a Partnership, et al., Respondents.

To the Honorable the Judges of the United States Circuit Court, Fifth Circuit and Southern District of Alabama:

The petition of Latham & Company, a partnership com-
29 posed of Edmond Latham, Charles Latham and Raoul

Latham, and domiciled in the city of Havre, republic of France, with respect represents:

That on or about April 29th, 1910, the plaintiffs above mentioned filed their bill of complaint against your petitioners and various other parties, whereby, among other relief, they prayed for the judicial sequestration of certain forty-two hundred (4,200) bales of cotton belonging to your petitioner and at that time situated in the city of Mobile, State of Alabama.

That in this cause, in pursuance of a decree made and entered by this honorable court on the 3rd day of May, 1910, the marshal of this district judicially sequestered and took into his possession said forty-two hundred bales of cotton belonging as aforesaid to your petitioners, and now holds same in his custody, and petitioners aver that they are owners of said cotton by purchase from Knight, Yancey & Co.

That your petitioners are entitled to and should be permitted to appear herein to bond and release said cotton, upon giving a bond properly conditioned and in a sum fixed by the court.

Wherefore, the premises considered, petitioners pray that, upon their furnishing bond with good and solvent surety satisfactory in amount and terms to this honorable court, the said sequestration be released and the marshal of this district be directed to deliver to your petitioners the said forty-two hundred bales of cotton belonging to your petitioners, at present in the custody of said marshal under said sequestration in the city of Mobile, numbered and marked as set forth in the exhibit attached to and made part of this petition, marked Exhibit "A"; and petitioners pray for such other and further orders as may be proper in the premises.

HOWE, FENNER, SPENCER & COCKE,
Solicitors for Latham & Co.

UNITED STATES OF AMERICA,
Southern District of Alabama:

Walker B. Spencer, being duly sworn, deposes and says that he is a member of the firm of Howe, Fenner, Spencer & Cocke, solicitors for Latham & Company, defendant in the above entitled and numbered cause; that none of the members of said firm of Latham & Company are within the jurisdiction of this court; that he has read the foregoing petition and knows the contents thereof; that the matters therein stated are true except as to such matters as may be stated on information and belief, and as to those he believes it to be true.

W. B. SPENCER.

Sworn to and subscribed before me, this 14th day of May, 1910.

RICHARD JONES, JR.,
Deputy Clerk.

EXHIBIT "A."

List of Marks of Latham & Company's Cotton at Mobile for Havre.

Custody Bills of Lading.

Number of bales.	Marks.
100	Q S U S
100	Q S A N
100	Q S D C
100	R S L I
100	R S I A
100	R S O T
100	R S N I
100	R S E R
100	P S I Z
100	P S O L
100	P S D Y
100	P S O G
100	P S E X
100	P S S E
100	P S C A
100	P S P L
100	Q S G Q
100	Q S X T
100	Q S E L
100	R S N U
100	R S L X
100	Q S Y T

31 List of Marks of Latham & Company's Cotton at Mobile for Havre.

Port Bills of Lading.

Number of bales.	Marks.
100	P S E V
100	P S E N
100	P S G E
100	P S O A
100	P S T W
100	P S R I
100	P S B A
100	P S O P
100	P S F A
100	P S K O
100	Q S O T
100	Q S H O
100	P S E A
100	P S D A

100	Q S D W
100	Q S A D
100	Q S M E
100	Q S O H
100	Q S O N
100	R S E N
100	R S X A

Filed May 14, 1910.

RICHARD JONES, *Clerk.*

32 *Decree Permitting Latham & Company to Bond Cotton.*

Circuit Court of the United States for Southern District of Alabama.

In Equity. No. 279.

CHARLES E. FROST et al.
vs.
LATHAM & COMPANY et al.

This cause coming on to be heard this 14th day of May, 1910, on the petition of Latham & Company to be permitted to appear herein, to bond and release the certain forty-two hundred (4,200) bales of cotton sequestered in this cause, and claimed by them, and the court having heard the parties and upon consideration whereof,

It is now ordered, adjudged and decreed that petitioners, Latham & Company, be and they hereby are permitted to appear herein, to bond said forty-two hundred (4,200) bales of cotton sequestered in this cause, and now in the custody of the marshal.

It is further ordered, that, upon Latham & Company furnishing forthcoming bond, with surety satisfactory to the clerk of this court and to be approved by him, in the sum of three hundred and twenty-five thousand ($325,000.00) dollars, conditioned that said Latham & Company shall have forthcoming said cotton, within sixty days from the date of any final decree in this cause, to the proper officer of this court, or to pay and satisfy such decree as may be rendered in this cause, the marshal is hereby ordered to release and deliver said forty-two hundred bales of cotton sequestered in this cause, and now in his possession, to Latham & Company, their solicitors or their order.

It is further ordered that the cost of all warehouse charges, including the cost of stowage, and cost of delivery of and of insurance be paid by Latham & Company to be costs of court and to abide the final decree in this cause.

HARRY T. TOULMIN, *Judge.*

Filed and duly entered May 14th, 1910.

RICHARD JONES, *Clerk.*

33 *Bond of Latham & Company for Release of Cotton.*

In the Circuit Court of the United States, Fifth Circuit, Southern District of Alabama, Southern Division.

In Equity. No. 279.

CLARENCE E. FROST and W. S. LOVELL, as Receivers of Knight, Yancey & Co., Bankrupts, and JOE T. GIBSON, Complainants,
vs.
LATHAM & COMPANY, a Partnership, et als., Respondents.

Know all men by these presents, That we, Latham & Company, a co-partnership composed of Edmond Latham, Charles Latham, and Raoul Latham, of Havre, France, as principal, and American Surety Company, of New York, as surety, are firmly held and bound unto Clarence E. Frost and William S. Lovell, as receivers of Knight, Yancey & Company, bankrupts, and Joe T. Gibson, complainants in the above entitled cause, and such other persons as may become parties complainant therein, severally, in the sum of three hundred and twenty-five thousand ($325,000.00) dollars lawful money of the United States of America for payment of which well and truly to be made we bind ourselves, successors, administrators, executors and heirs, jointly and severally, firmly by these presents.

Thus done and signed in the city of Mobile, Alabama, this 14th day of May, 1910.

Now, the condition of this obligation is such, that, whereas in the above entitled and mentioned cause, the Honorable H. T. Toulmin, judge of said court, by an order or decree dated the 3rd day of May, 1910, caused to be issued out of said court a writ of sequestration ordering the marshal of this district to seize and take into his custody certain forty two hundred bales of cotton described in said writ, but by decree entered May 14, 1910, authorized the release and delivery thereof to Latham & Company upon the execution and delivery of a forthcoming bond in the sum aforesaid and said cotton has been so released and delivered to the principal on this obligation.

Now, therefore, if the obligors herein shall have forthcoming and deliver within sixty days from date of any final decree of this
34 court said cotton to the proper officer of the court, or shall pay and satisfy such decree as may be rendered in the premises, then this obligation shall be null and void, otherwise to remain in full force and effect.

LATHAM & COMPANY, [SEAL.]
By W. B. SPENCER, *Att'y of Record.*
AMERICAN SURETY CO. OF NEW YORK, [SEAL.]
By LLOYD D. BATRE, *Res. Vice Pres.*

[CORPORATE SEAL.]

Attest:
PALMER PILLANS,
Res. Ass't Secretary.

Approved this May 14th, 1910.
RICHARD JONES,
Clerk U. S. Circuit Court.

Filed this May 14th, 1910.
RICHARD JONES, *Clerk.*

Notice to the Marshal to Release Cotton.

Circuit Court of the United States for the Southern District of Alabama.

In Equity. No. 279.

CARENCE E. FROST et al.
vs.
LATHAM & COMPANY et al.

To the United States Marshal for said District:

Latham & Company having been permitted by the court to bond the 4,200 bales of cotton now held by you under the writ of sequestration issued herein on May 4th, 1910, and having made the bond required by the court for the release of said cotton, which bond is duly approved and filed herein, you are hereby notified to deliver said 4,200 bales of cotton to Latham & Company, their solicitors or their order.

Witness my hand and seal of said court, this May 14th, 1910.
RICHARD JONES, *Clerk.*

Received in office May 14, 1910, and executed by transferring to Latham & Company the warehouse receipts for the within 4,200 bales of cotton in pursuance of this notice, this May 14, 1910.
G. B. DEANS,
U. S. Marshal.

Filed May 14, 1910.
RICHARD JONES, *Clerk.*

35 *Demurrers by Latham & Co. to Bill of Complaint.*

In the Circuit Court of the United States, Fifth Circuit and Southern District of Alabama.

In Equity. No. 279.

CLARENCE E. FROST and WILLIAM S. LOVELL, as Receivers of Knight, Yancey & Company, Bankrupts, and Joe T. Gibson, Complainants,

vs.

LATHAM & COMPANY, a Partnership, et al., Respondents.

The joint and several demurrer- of Edmond Latham, Charles W. Latham and Raoul Latham, composing the co-partnership of Latham & Company, defendants, to the bill of complaint of Clarence E. Frost and William S. Lovell, as receivers of Knight, Yancey & Company, bankrupts, and Joe T. Gibson.

These defendants respectively, by protestation, not confessing or acknowledging any or all of the matters and things in the said plaintiffs' bill to be true in the manner and form as the same are therein set forth and alleged, do demur thereto, and for cause of demurrer show:

First.

That this honorable court is without jurisdiction ratione materiæ to hear and determine the matters and things in said bill alleged, or to grant the relief therein prayed for.

Second.

That the complainants, Clarence E. Frost and William S. Lovell, as receivers of Knight, Yancey & Company, bankrupts, and Joe T. Gibson, as creditor of said Knight, Yancey & Company, bankrupts, have no capacity, power or authority to institute, maintain or prosecute this suit in the form and for the matters and things therein alleged, nor to pray for or receive and have the relief in said bill prayed for.

Third.

That the said plaintiffs have not in and by said bill made or stated any such cause as does or ought to entitle them to any such
36 relief as is thereby sought and prayed for from or against these defendants.

Wherefore, these defendants pray the judgment of this honorable court whether they shall be compelled to make any further or other answer to the said bill or any of the matters and things therein contained, and pray to be hence dismissed with their reasonable costs in this behalf sustained.

HOWE, FENNER, SPENCER & COCKE,
Solicitors for Latham & Company, Defendants.

STATE OF LOUISIANA,
Parish of Orleans:

Pierre Walther makes solemn oath and says: That he is the agent of the firm of Latham & Company, and authorized to make this affidavit; that none of the members of said firm are present in the United States; that the foregoing demurrer is not interposed for delay; and that same is true in point of fact.

PIERRE WALTHER.

Sworn to and subscribed before me, this 24th day of May, 1910.

PIERRE D. OLIVIER,
Notary Public.

I hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

W. B. SPENCER,
Solicitor for the Defendants, Latham & Company.

Filed May 25th, 1910.

RICHARD JONES, *Clerk.*

Motion for Leave to File Supplemental Bill.

In the Circuit Court of the United States, Fifth Circuit, Southern District of Alabama, Southern Division.

In Equity. No. 279.

CLARENCE E. FROST and WILLIAM S. LOVELL, as Receivers of Knight, Yancey & Company, Bankrupts, and Joe T. Gibson, Complainants,

vs.

LATHAM & COMPANY, a Partnership, et als., Respondents.

Come the complainants, Clarence E. Frost and William S. Lovell, as receivers of Knight, Yancey & Company, bankrupt, and
37 Joe T. Gibson, an unsecured creditor of said bankrupt, and comes also William S. Lovell, as trustee in bankruptcy of Knight, Yancey & Company, bankrupt, and show to the court:

That, on to-wit, May 26, 1910, the first meeting of the creditors of Knight, Yancey & Company, the bankrupt mentioned in the original bill of complaint in this cause, was held, and that at such meeting William S. Lovell was duly appointed the trustee in bankruptcy of said bankrupt.

The said William S. Lovell, as trustee in bankruptcy of Knight, Yancey & Company, desires to be made sole complainant in the above styled cause, and to assume the prosecution thereof on behalf of all creditors of said bankrupt estate, and to assume all obligations and liabilities of the complainants in said cause, all of which the complainants in said cause are willing should be done.

Wherefore, the said Clarence E. Frost and William S. Lovell, as receivers of Knight, Yancey & Company, bankrupt, and the said Joe T. Gibson, an unsecured creditor of said bankrupt estate, 1st, move the court that said William S. Lovell be allowed and permitted to file his supplemental bill in said cause, of which a copy is hereto attached; 2nd, and move the court to substitute said William S. Lovell, as trustee, as aforesaid, for the original complainants in said cause as sole complainant therein; 3rd, and move the court to make and allow an order subjecting him, the said William S. Lovell, as trustee, as aforesaid, to all the liabilities and obligations in said cause of them, the said complainants; 4th, and further move the court to order that the said William S. Lovell may have the benefit of all orders and proceedings heretofore taken in said cause, and the benefit of the bond given in said cause by respondent, Latham & Company, to have forthcoming forty-two hundred bales of cotton mentioned in said bond.

Movants further show to the court that, as will appear by reference to the proceedings in said cause, the forty-two hundred bales of cotton mentioned in the original bill *was* seized under the orders of this court by the marshal of this district, and have since been released from such seizure and delivered into possession of respondent, Latham & Company; and further show to the court that no relief is desired in said cause by the complainants except against the respondent, Latham & Company.

38 5th. Wherefore, complainants move the court to dispense with the Louisville & Nashville Railroad Company, Elder, Dempster & Company, Frederick Leyland Steamship Company, Limited, 1905, of Liverpool, and Arthur Parker, master of said steamship Meltonian, the steamship Meltonian, Pierre Walther, J. W. Knight, W. D. Nesbitt, R. H. Nesbitt and W. J. Yancey as parties respondent to said cause; 6th, and further move the court to permit them to amend their said bill by striking out the following words in the introductory part of said bill, to-wit: "and Latham & Company, a partnership, and the names of the partners composing the same being unknown to these complainants, except that of Edmond Latham and Pierre Walther, all of whom reside at Havre, in the republic of France," and inserting in lieu thereof these words: "and Latham & Company, a partnership composed of Edmond Latham, Charles W. Latham and Raoul Latham, all of whom are citizens of the republic of France, and reside at Havre, France, at which place said partnership, Latham & Company, has its principal place of business"; and further to amend their bill by inserting a paragraph to be numbered 5½, which will appear between the end of the fifth and the beginning of the sixth paragraphs, to read as follows: "5½. The value of the matters in dispute in this cause, exclusive of interest and costs, exceeds the value of two thousand dollars."

Complainants show to the court that, at the time said original bill was filed, the names of the partners composing said partnership of Latham & Company were unknown to them, and the averment above proposed to be set forth as paragraph 5½ of the bill was omitted

therefrom through oversight, the substance of said averment appearing inferentially from the averments of the bill as originally framed.

JOE T. GIBSON,
By AUGUSTUS BENNERS,
His Attorney.
CLARENCE E. FROST,
As Receiver in Bankruptcy of Knight, Yancey & Co., Bankrupts.
WILLIAM S. LOVELL,
As Receiver in Bankruptcy of Knight, Yancey & Company.
WILLIAM S. LOVELL,
As Trustee in Bankruptcy of Knight, Yancey & Company.
PERCY, BENNERS & BURR,
RICH & HAMILTON,
Solicitors for Complainants.

39 STATE OF ALABAMA,
Jefferson County:

William S. Lovell being duly sworn deposes and says that the averments of fact contained in the above and foregoing are true.

WILLIAM S. LOVELL.

Subscribed and sworn to before me, this 23rd day of June, 1910.

DAVID B. ADAMS,
Notary Public.

Filed June 27, 1910.

RICHARD JONES, *Clerk.*

To Messrs. Howe, Fenner, Spencer & Cocke, Solicitors for Latham & Company:

You will please take notice that, on the next rule days, the attached motion and application will be presented to the Honorable Harry Toulmin, judge, at Mobile, Alabama.

PERCY, BENNERS & BURR,
RICH & HAMILTON,
Solicitors for Complainants.

Answer of Knauth, Nachod & Kuhne to Amended Bill of Complaint.

In the Circuit Court of the United States, Southern District of Alabama, Southern Division.

In Equity. No. 279.

CLARENCE E. FROST and W. S. LOVELL, as Receivers of Knight, Yancey & Company, Bankrupts, and Joe T. Gibson, Complainants,

vs.

LATHAM & COMPANY, a Partnership, et als., Respondents.

The defendants Friedrich Nachod, Max Jaffe, Wilhelm Knauth, August Stern, Oscar L. Gubelman, Arend H. Weingardt, Rollin C.

Newton, Mary W. Knauth and Percival Kuhne, composing the co-partnership firm of Knauth, Nachod & Kuhne (impleaded as "persons other than said Latham & Company who claim some right, title or interest in said seventy-eight hundred (7,800) bales of
40 cotton, or portions thereof, and that the names of such other persons are unknown to these complainants," by an amendment allowed by order entered on or about the 5th day of May, 1910), answer the amended bill of complaint herein as follows:

1. The said Knauth, Nachod & Kuhne are strangers to many of the matters and things alleged in said amended bill of complaint, and have no personal knowledge thereof, but for the purposes of this suit admit all of the allegations of said amended bill, except so far as the same are contrary to or inconsistent with the claim of the said Knauth, Nachod & Kuhne that they are the equitable owners, of the cotton or property or rights set forth in said amended bill, by title and right prior and paramount to the title or right of the receivers or of other creditors or of the trustee in bankruptcy of Knight, Yancey & Company, to the extent of 1,300 bales of cotton or to the amount of $98,005.58. So far as the allegations of said amended bill are inconsistent with or contrary to said claim they are denied.

2. The said Knauth, Nachod & Kuhne beg leave to refer to and make a part hereof their cross-bill filed herewith, as if the same were herein fully and at length set forth, as a statement of their said claim.

3. Under the circumstances and to avoid unnecessary prolixity, said Knauth, Nachod & Kuhne abstain from answering separately the allegations of the amended bill, but are willing to do so and will make such an answer if the court so direct.

Wherefore, the said Knauth, Nachod & Kuhne pray the judgment and decree or decrees of this court according to the prayer of their said cross-bill together with their reasonable costs and disbursements in the suit.

KNAUTH, NACHOD & KUHNE,
Defendants Impleaded as Above Stated.
STEVENS & LYONS,
Solicitors and Counsel for Said Defendants,
503 *City Bank Building, Mobile, Alabama.*
BRIESEN & KNAUTH,
Of Counsel for Said Defendants,
25 *Broad St., New York, N. Y.*

STATE OF NEW YORK,
County of New York:

Arend H. Weingardt, being duly sworn, says: That he is
41 a member of the firm of Knauth, Nachod & Kuhne and signed the foregoing answer in the name of his said firm; that the said defendants are co-partners pleading together, and that he is authorized to make and does make this verification on behalf of his co-partners as well as on behalf of himself; that he has read the foregoing answer and knows the contents thereof and that the same is true to his own knowledge except as to the matters therein

stated to be alleged on information and belief and that as to those matters he believes it to be true.

AREND H. WEINGARDT.

Sworn to before me, this 27th day of June, 1910.

FRANK F. KIRKPATRICK,
[SEAL.] *Notary Public, New York County.*

Filed July 1, 1910.

RICHARD JONES, *Clerk.*

Decree Allowing Knauth, Nachod & Kuhne to File Cross-bill.

At a Regular Term of the Circuit Court of the United States Held in and for the Southern Division of the Southern District of Alabama, on the 1st Day of July, 1910.

Present: Hon. Harry T. Toulmin, District Judge.

In Equity. No. 279.

CLARENCE E. FROST and W. S. LOVELL, as Receivers of Knight, Yancey & Company, Bankrupts, and Joe T. Gibson, Complainants,

against

LATHAM & COMPANY, a Partnership, et al., Respondents.

This cause came on to be heard at this term, and was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged and decreed as follows, viz:

That the defendants Knauth, Nachod & Kuhne (impleaded as unknown persons by the amendment allowed to the bill of complaint by the order entered herein on the 5th day of May, 1910), be and they hereby are granted leave to file their cross-bill in this
42 cause; and that the same be filed and process issued according to the prayer thereof.

Dated this 1st day of July, 1910.

HARRY T. TOULMIN,
District Judge Holding the Court.

Filed and duly entered July 1, 1910.

RICHARD JONES, *Clerk.*

Objections by Latham & Company to Granting Motion of Complainants for Leave to File Supplemental Bill, etc.

In the Circuit Court of the United States, Fifth Circuit and Southern District of Alabama.

In Equity. No. 279.

CLARENCE E. FROST and WILLIAM S. LOVELL, as Receivers of Knight, Yancey & Company, Bankrupts, and Joe T. Gibson, Complainants,

vs.

LATHAM & COMPANY, a Partnership, et al., Respondents.

Now come Edmond Latham, Charles W. Latham and Raoul Latham, composing the co-partnership of Latham & Company, defendants herein, and object to the granting of the order asked for on the motion of Wm. S. Lovell filed herein, whereby, among other things, he prays leave to file a supplemental bill herein, to be substituted as party plaintiff for the original plaintiffs in said suit, and for the dismissal from said suit of said original plaintiffs, upon the following grounds, to-wit:

1. The original plaintiffs were without legal right or capacity to institute or maintain the bill filed by them herein, or to have the relief therein prayed for, and therefore Wm. S. Lovell, the trustee, cannot be substituted as a plaintiff by supplemental bill.

2. That the original bill herein did not state or show any right or cause of action in the original plaintiffs, and the trustee cannot, by supplemental bill, have himself substituted as plaintiff and state a cause of action.

43 3. That the court had no jurisdiction ratione materiæ of the matters and things in said original bill set forth.

4. That as respects this suit, there is no privity of title between said trustee and said complainants, and particularly between said trustee and Joe T. Gibson, one of the complainants, and therefore said trustee cannot be substituted for the parties plaintiff to the original bill.

5. That this court has no jurisdiction ratione materiæ to hear or determine the matters and things set forth in said proposed supplemental bill.

6. That as between the parties to said original bill, filing of said supplemental bill would cause a change of interest that would affect the interest between the parties, in that it would substitute in said suit in the stead of parties who had no right or cause of action a different party who has such right or cause of action in the matters and things in said original bill contained.

7. That the receivers in bankruptcy, parties plaintiff to said original bill, are still necessary parties to this suit, and have an interest therein, in view of the fact that if said suit is not maintained they are liable to damages for the wrongful seizure of defendants' property, and in no event can said Joe T. Gibson be dismissed.

Wherefore, for the reasons aforesaid, defendants pray that the relief prayed for in said motion be denied.

HOWE, FENNER, SPENCER & COCKE,
Solicitors for Latham & Co.

Filed July 5, 1910.

RICHARD JONES, *Clerk.*

Decree as to Service under Cross-bill of Knauth, Nachod & Kuhne, Directing Alias Subpœnas to Issue, etc.

Circuit Court of the United States for the Southern District of Alabama.

In Equity. No. 279.

FRIEDRICH NACHOD and Others, Complainants,
against
EDMOND LATHAM and Others, Defendants.

This cause came on to be heard at this term, and there-
44 upon, upon consideration thereof, it is ordered, adjudged and decreed, as follows, viz:

1. That an alias subpœna ad respondendum be issued on the cross-bill of Knauth, Nachod & Kuhne (duly filed in the suit entitled Clarence E. Frost and W. S. Lovell, as receivers of the Knight, Yancey & Company, bankrupts, and Joe T. Gibson, complainants, vs. Latham & Company, et al., respondents), and be made returnable on or before the next rule day occurring after twenty days from the issuing thereof.

2. That said alias subpœna ad respondendum be delivered to the marshal of the Southern district of Alabama for service on Edmond Latham, Charles Latham, Raoul Latham, Clarence E. Frost and William S. Lovell, as receivers in bankruptcy of the estate of Knight, Yancey & Company; Joe T. Gibson, and William S. Lovell, as trustee in bankruptcy of the estate of Knight, Yancey & Company, defendants named in said cross-bill; and that (in case they or any of them shall not be found in said district or shall not have voluntarily appeared thereto) service thereof be made on Messrs. Howe, Fenner, Spencer & Cocke, as solicitors in said original suit for said Edmond Latham, Charles Latham and Raoul Latham, and on Messrs. Rich & Hamilton, as the resident solicitors in said original suit for said receivers, for said Gibson and for said trustee.

3. That a duplicate of said alias subpœna ad respondendum be delivered to the marshal of the Northern District of Alabama for service on John W. Knight, at Decatur, Alabama, and William D. Nesbitt, of Birmingham, Alabama, both being defendants named in said cross-bill (provided that they or either of them shall not have voluntarily appeared thereto), and that service thereof be made personally on each of them who has not voluntarily appeared.

4. That another duplicate of said alias subpœna ad respon-dum be delivered to the marshal of the District of South Carolina for service on Robert H. Nesbitt, of Spartanburg, South Carolina, a defendant named in said cross-bill, (provided that he shall not have

voluntarily appeared thereto), and that service thereof be made on him personally.

5. That another duplicate of said alias subpœna ad respondendum be delivered to the marshal of the Western District of Tennessee for service on William J. Yancey, of Memphis, Tennessee, a defendant named in said cross-bill (provided that he shall not have voluntarily appeared thereto), and that service thereof be made on him personally.

5½. That in the event that Messrs. Howe, Fenner, Spencer & Cocke shall not be found within the Southern District of Alabama so that service may be effected upon Edmond Latham, Charles Latham, and Raoul Latham, through the said Howe, Fenner, Spencer & Cocke, as solicitors, then another duplicate of said alias subpœna ad respondendum be delivered to the marshal of the Eastern District of Louisiana for service on Howe, Fenner, Spencer & Cocke, as solicitors in said original suit for said Edmond Latham, Charles Latham and Raoul Latham, in all respects as ordered in the second paragraph of this order, and that service of said subpœna be made upon them personally.

6. That a copy of this order be served with said alias subpœna ad respondendum, if service thereof be made on said solicitors for said Edmond Latham, Charles Latham and Raoul Latham; that a copy of this order be also served with said alias subpœna ad respondendum, if service thereof be made on said solicitors for said receivers, for said Gibson and for said trustee; that a copy of this order be also served with said alias subpœna ad respondendum on said John W. Knight and on said William D. Nesbitt; that a copy of this order be also served with said alias subpœna ad respondendum on said Robert H. Nesbitt; and that a copy of this order be also served with said alias subpœna ad respondendum on said William J. Yancey.

7. That Edmond Latham, of Havre, France; Charles Latham, of Havre, France; Raoul Latham, of Havre, France; John W. Knight, of Decatur, Alabama; William J. Yancey, of Memphis, Tennessee; William D. Nesbitt, of Birmingham, Alabama; Robert H. Nesbitt, of Spartanburg, South Carolina; Clarence E. Frost and William S. Lovell, as receivers in bankruptcy of the estate of Knight, Yancey & Company, bankrupts, appointed by the United States District Court for the Northern District of Alabama; and Joe T. Gibson, of the Northern District of Alabama; and William S. Lovell, as trustee in bankruptcy of the estate of Knight, Yancey & Company, appointed by the United States District Court for the Northern District of Alabama, all being the aforesaid defendants named, with others, in said cross-bill of Knauth, Nachod & Kuhne, be and each of them hereby is directed and required to appear, plead, answer, or demur to the said cross-bill on or before the return day of said alias subpœna ad respondendum, to-wit, by the 5th day of September, 1910.

Dated this 21st day of July, 1910.

HARRY T. TOULMIN,
District Judge Holding the Court.

Filed and entered July 21, 1910.

RICHARD JONES, *Clerk.*

Opinion on the Motion for Leave to File Supplemental Bill, etc.

Circuit Court of the United States for the Southern District of Alabama.

In Equity. No. 279.

CLARENCE E. FROST and WILLIAM S. LOVELL, as Receivers of Knight, Yancey & Company, Bankrupts, and Joe T. Gibson, Complainants,

vs.

LATHAM & COMPANY, a Partnership, et al., Defendants.

Percy, Benners & Burr, Rich & Hamilton, Solicitors for Complainants; Howe, Fenner, Spencer & Cocke, Solicitors for Defendants.

Submitted on motion of William S. Lovell, as trustee in bankruptcy of said bankrupts, et al., for said trustee to be allowed to file a supplemental bill, etc., and objections thereto by defendants, Latham & Co., and also on demurrers filed by the defendants, Latham & Co., to the original bill in this cause.

TOULMIN, *District Judge:*

The grounds of objections by the defendants to this motion are, in substance, as follows:

1. That the original plaintiffs were without legal right or capacity to institute or maintain the bill filed by them herein, or to have the relief prayed for.

47 2. That the original bill herein did not state or show any right or cause of action in the original plaintiffs.

3. That this court has no jurisdiction of the matters and things in said original bill set forth.

4. That there is no privity of title between said trustee and said complainants, and particularly between said trustee and said Joe T. Gibson, one of the complainants.

5. That this court has no jurisdiction to hear and determine the matters and things set forth in said proposed supplemental bill.

6. That the filing of the supplemental bill would cause a change of interest in that it would substitute in said suit, instead of parties who had no right of action, a different party who has such right of action in the matters and things in said original bill contained.

7. That said receivers, parties plaintiff to said original bill, are still necessary parties to this suit.

It is well settled that receivers in bankruptcy have no legal right or capacity to maintain a suit of this character or to have the relief prayed for; and the writer, presiding in the district court for this district, so ruled in a suit of this character, brought by said receivers in that court. This court now holds that said receivers are not necessary or proper parties to this suit.

2. Section 64-*b* (2) of the Bankrupt Act clearly recognizes the right of a creditor to institute proceedings to recover, for the benefit of the estate of the bankrupt, property transferred by him either before or after filing of the petition wherein it provides that when such property shall have been recovered by the efforts and at the expense of one or more creditors, the reasonable expenses of such recovery shall be paid out of the bankrupt estate. While the language employed does not expressly vest in a creditor the right to bring suit to recover property, it implies that right to exist as clearly as language can do so. And it will be observed that the act makes no distinction as to the character of the transfer, whether it be one involving actual fraud—an intent to hinder, delay or defraud
48 the creditors of the bankrupt, which the law declares to be null and void—or a constructive fraud—"an act which the law declares to be fraudulent without inquiring into its motive."

McBroom vs. Turner & Rives, 1 Stew., 72.

A preferential transfer is a constructive fraud. It is one which to some extent hinders and delays creditors but is not necessarily, in and of itself, a fraudulent transfer. It is, however, "an infraction of that rule of equal distribution among all creditors which is the policy of the law to enforce when all cannot be fully paid."

Van Iderstein vs. Nat. Dis. Co., 174 Fed., 519.

So then it makes no difference whether the transfer be one of actual or of constructive and technical fraud, so far as the interest and rights of creditors are concerned. The effect of the transaction is the same. See also Section 70-*e*, Bankrupt Act.

"A trustee in bankruptcy represents all persons interested in the estate of the bankrupt."

In re Roth, 173 Fed., 597.

He is the representative of the creditors of the bankrupt, and if he in any given case would have the right as their representative to institute a suit to set aside fraudulent or preferential transfer, it seems to me, it follows as a necessary consequence, that such creditors are entitled to do so also, in the absence of a trustee, and to maintain the same until such trustee shall have been chosen, when he would be entitled to become a party plaintiff in the suit.

The court, in Fourth St. Nat. Bank vs. Millbourne Mills Co., 172 Fed., 177, said:

"Unless the rights of creditors are preserved and protected in some such way, bankruptcy, instead of being in their (creditors') interest, as supposed, is an actual disadvantage."

Where the transfer is made fraudulent or voidable by the bankrupt act as against creditors, and no trustee having been chosen, the creditors have the right themselves to take steps to avoid such transfer. "If this be so, any creditor would be entitled to sue on behalf of himself and others, either before or after institution of pro-
49 ceedings in bankruptcy, such suit, if after, being ancillary thereto, no trustee having yet been chosen."

Guarantee Title & Trust Co. vs. Pearlman, 144 Fed., 550; In re Schrom, 97 Fed., 760.

"Creditors may institute suits for the recovery of property fraudulently transferred."

Remington on Bankruptcy, Vol. 1, Sec. 399.

"To recover property conveyed by the bankrupt in fraud of the act, either as a preference or a fraudulent conveyance, is not a proceeding in bankruptcy. It must be a plenary suit at law or in equity, according to the nature of the case. Such suit may be an action at law or suit in equity, as a bill to set aside a fraudulent conveyance."

Loveland on Bankruptcy (2nd Ed.), 608; Parker vs. Black, 151 Fed., 18.

The supreme court of the United States, in Bardes vs. Bank, 178 U. S., 524, employes language which indicates that the court regarded the payment to a creditor by a bankrupt in violation of the bankruptcy act as in the nature of a fraud, and that a remedy in equity would more readily afford adequate relief. In referring to the jurisdiction of the United States courts, the language employed includes suits "to set aside transfers of property to third parties alleged to be fraudulent as against creditors, including payments of money or property to preferred creditors."

The question of jurisdiction of the court is a question of the right of the court to determine, not of the principles to obtain in reaching a determination. If the bankrupt himself had brought this suit he could not be turned out of court on the question of jurisdiction. The authority of the court to decide as to his rights would be unquestioned. But he would be precluded in his right to relief by his own act of making a fraudulent or preferential transfer. He would be denied relief upon the principles of estoppel. Where the suit is by the trustee or by a creditor, a different result would follow. It is not a question of the determination to be reached but of jurisdiction to hear and make the determination.

Burnett vs. Morris Mer. Co., 91 Fed., 365.

50 In the absence of the amendment of February 5th, 1903, to the Bankrupt Act, the question involved in this suit must be determined either by the proper court of the state or by the Federal circuit court.

Hicks vs. Knost, 94 Fed., 625; Camp vs. Kellars, 94 Fed., 799.

Since said amendment of February 5th, 1903, the trustee may maintain a suit in the proper district court, as a court of bankruptcy, to set aside preferential transfers, and to recover the property transferred. The right to do so is exclusively in him so far as that court is concerned. The right to bring such suit in the bankruptcy court is given exclusively to the trustee. Said amendment does not take away, or in any manner limit the jurisdiction conferred by the bankrupt act on the circuit court of the United States and on the state courts.

The United States circuit courts have jurisdiction of suits at law and in equity between the trustee and adverse claimants, etc. Sections 23, 60-*b*, and 67-*e*, Bankrupt Act.

"A trustee in bankruptcy may at his election maintain a suit in equity to recover a payment by a bankrupt to a creditor as a voidable preference; such suit being in the nature of a creditor's suit to set aside a fraudulent conveyance."

Parker vs. Black, 151 Fed., 18; Pond vs. N. Y. Nat. Ex. Bk., 124 Fed., 992.

In Hull vs. Burr, 153 Fed., 951, the circuit court of appeals, 5th circuit, said:

"The trustee is vested by the Act with all the rights and title of the bankrupt, as well as with the rights of the bankrupt's creditors, and when he seeks to enforce rights or to recover property in another district outside of the territorial jurisdiction of the court which appointed him, he stands in the position of those whose rights he has acquired, and can resort only to the same courts, state or federal, and is confined to the same remedies, subject to the exceptions made by the amendment of 1903." Under that amendment, as we have seen, the trustee may bring suit in the bankruptcy court to recover property fraudulently transferred by the bankrupt, whether the transfer be actually or constructively fraudulent—void or voidable—as to the bankrupt's creditors.

51 The allegations of the bill, if true, make a case of preferential transfer—one voidable as against creditors of the bankrupt. They have rights involved in the avoidance of the transfer. The trustee is vested with these rights, and when he seeks to enforce them it is in the interest, and for the benefit of said creditors. It seems to me that there is a "privity" of right between the trustee and said creditors, Joe T. Gibson being one of said creditors, and a complainant in this cause, in behalf of himself and all other creditors of said bankrupt who may become parties therein.

The demurrers to the original bill are overruled, and the objections to the motion of William S. Lovell, as trustee in bankruptcy of Knight, Yancey & Co., et al., for leave to file a supplemental bill, etc., in this cause, are overruled, and said motion for leave to file an amended or supplemental bill, etc., is hereby granted. Let an order be entered accordingly.

Filed August 20, 1910.

RICHARD JONES, *Clerk.*

Decree Overruling Demurrers to Original Bill, Granting Leave to File Supplemental Bill, etc.

Circuit Court of the United States for the Southern District of Alabama.

In Equity. No. 279.

CLARENCE E. FROST et al. and WILLIAM S. LOVELL, as Trustee in Bankruptcy of Knight, Yancey & Company,
vs.
LATHAM & COMPANY et al.

This cause coming on to be heard and being argued and submitted on the motion of the complainants and William S. Lovell as trustee in bankruptcy of Knight, Yancey & Company for leave to file a supplemental bill herein, etc., and the objections thereto filed by defendant Latham & Company; and also on demurrers filed by said defendants to the original bill, and the same being duly considered by the court, it is ordered, adjudged and decreed by the court that
52 said demurrers to the original bill herein be and the same are hereby overruled, and that said objections to said motion to file a supplemental bill, etc., be and the same are hereby overruled, and that said motion be and the same is hereby granted; and it is therefore, accordingly, further ordered, adjudged and decreed as follows:

1. That William S. Lovell as trustee in bankruptcy of Knight, Yancey & Company be and he is hereby allowed to file herein the supplemental bill presented with said motion,

2. That William S. Lovell as trustee in bankruptcy of Knight, Yancey & Company be and he is hereby substituted for the original complainants herein, and he is hereby made the sole complainant herein,

3. That William S. Lovell as such trustee and complainant be and he is hereby subjected to all the liabilities and obligations herein of the original complainants,

4. That William S. Lovell as such trustee and complainant herein may have the benefit of all orders and proceedings heretofore taken herein, and the benefit of the bond given herein by defendants Latham & Company to have forthcoming 4,200 bales of cotton mentioned in said bond.

5. That the cause be and the same is hereby dismissed as to defendants Louisville & Nashville Railroad Company, Elder, Dempster & Company, Frederick Leyland Steamship Company, Limited, 1905, Liverpool, Arthur Parker, master of steamship Meltonian, steamship Meltonian, Pierre Walther, J. W. Knight, W. D. Nesbitt, R. H. Nesbitt and W. J. Yancey,

6. That complainant herein is hereby allowed to amend the original bill herein by striking out the following words in the introductory part thereof, to-wit: "and Latham & Company, a partnership,

and the names of the partners composing the same being unknown to these complainants, except that of Edmond Latham and Pierre Walther, all of whom reside at Havre, in the republic of France," and inserting in lieu thereof the following: "and Latham & Company, a partnership composed of Edmond Latham, Charles W. Latham and Raoul Latham, all of whom are citizens of the republic of France, and reside at Havre, France, at which place said
53 partnership, Latham & Company, has its principal place of business;" and to further amend said bill by inserting between paragraphs 5 and 6 thereof a paragraph to be numbered 5½ to read as follows: "The value of the matter in dispute in this cause, exclusive of interest and costs, exceeds the value of two thousand dollars."

It is further ordered, adjudged and decreed that defendants Latham & Company and the partners composing said firm be and they are hereby required to answer the original bill herein as amended and the supplemental bill on or before October 1, 1910.

Made this August 20th, A. D. 1910.

HARRY T. TOULMIN, *Judge.*

Filed and entered August 20, 1910.

RICHARD JONES, *Clerk.*

Supplemental Bill of Complaint and Exhibit Thereto.

In the Circuit Court of the United States, Fifth Circuit, Southern District of Alabama, Southern Division.

No. 279. In Equity.

CLARENCE E. FROST and WILLIAM S. LOVELL, as Receivers of Knight, Yancey & Company, Bankrupts, and Joe T. Gibson, Complainants,

vs.

LATHAM & COMPANY, a Partnership, et als., Respondents.

WILLIAM S. LOVELL, as Trustee in Bankruptcy of Knight, Yancey & Company, Bankrupt, Complainant,

vs.

LATHAM & COMPANY, a Partnership, Respondents.

To the Honorable Judges of the Circuit Court of the United States for the Fifth Circuit, Southern District of Alabama, Southern Division:

Comes William S. Lovell, as trustee in bankruptcy of
54 Knight, Yancey & Company, bankrupt, and exhibits this his supplemental bill against Latham & Company, a partnership, this supplemental bill being exhibited in that certain cause in equity numbered 279, pending in the circuit court of the United States for the Fifth Circuit, Southern District of Alabama, Southern Division, wherein Clarence E. Frost and William S. Lovell, as receivers of

Knight, Yancey & Company, bankrupt, and Joe T. Gibson, are complainants, and Latham & Company, a partnership, and others are respondents, and shows to the court:

1st. That the complainant, William S. Lovell, is a citizen of the state of Alabama, and resides in the city of Birmingham in said state; that the respondent, Latham & Company, is a partnership composed of Edmond Latham, Charles W. Latham and Raoul Latham, all of whom are citizens of the republic of France, and reside in Havre, France, at which place said Latham & Company has its principal place of business; that Knight, Yancey & Company was a partnership composed of John W. Knight, who resided at the time of the adjudication of said partnership to be a bankrupt and still resides in Decatur, Alabama; William D. Nesbitt, who then resided and still resides at Birmingham, Alabama; William J. Yancey, who then resided and now resides in Memphis, Tennessee; and Robert H. Nesbitt, who then resided and now resides in Spartanburg, South Carolina; that the principal place of business of the said Knight, Yancey & Company was at Decatur, Alabama.

2nd. That, on to-wit, April 29, 1910, the original bill of Clarence E. Frost and William S. Lovell, as receivers in bankruptcy of Knight, Yancey & Company, bankrupt, and Joe T. Gibson, an unsecured creditor of said bankrupt estate, against Latham & Company, a partnership, and others, was filed in this honorable court; that, as will appear by reference to the averments of said original bill, the purpose thereof was to procure the setting aside of a preferential transfer of seventy-eight hundred bales of cotton made by the bankrupt, Knight, Yancey & Company, to the respondent, Latham & Company, within four months prior to the adjudication in bankruptcy of said bankrupt, and to prevent the removal of forty-two hundred of such bales of cotton at the port of Mobile, Alabama, from without the jurisdiction of the courts of the United States.

55 3rd. Complainant further shows to the court that, as will appear by the record and proceedings in said cause, this honorable court caused forty-two hundred bales of cotton particularly referred to in the original bill, which said cotton was at the port of Mobile, to be seized and sequestered by the marshal of this district; and, thereafter, upon the appearance and application of said Latham & Company, permitted them to file their bond in this cause, with surety conditioned on the obligors therein having forthcoming and delivering within sixty days from the date of any final decree of this honorable court, the cotton in said bond mentioned to the proper officer of the court; or to pay and satisfy such decree as may be rendered in this cause, which said bond was payable to the order of complainants in said cause, and such other persons as might becomes parties complainant therein, severally; and, upon the execution and approval of said bond, this court permitted the said Latham & Company to take into their possession the forty-two hundred bales of cotton hereinbefore mentioned. Thereafter, said Latham & Company filed their demurrers in said cause, which remain undisposed of.

4th. Said William S. Lovell, as trustee, as aforesaid, further shows to the court that, at the time said original bill of complaint was filed,

no trustee in bankruptcy of said bankrupt estate had been appointed; and that the first meeting of the creditors of said bankrupt estate was held on, to-wit, May 26th, 1910, and that at such meeting he, the said William S. Lovell, was duly appointed the trustee in bankruptcy of the estate of Knight, Yancey & Company, bankrupt, as will more fully appear by reference to the order approving his bond as such trustee, a copy whereof is hereto attached as Exhibit "A," and prayed to be taken as a part of this supplemental bill.

5th. Orator further charges that said Knight, Yancey & Company were, prior to the adjudication of bankruptcy of said Knight, Yancey & Company, engaged in the purchase of cotton at various points in the cotton producing section of the United States, and exporting said cotton to various ports in foreign countries; that said Knight, Yancey & Company having become involved in financial difficulties, had issued a large number of spurious bills of lading pur-
56 porting to be for cotton actually shipped, but which was in fact not shipped, among which bills of lading were bills of lading for, to-wit, seventy-eight hundred bales of cotton to which spurious bills of lading were attached drafts drawn by the said Knight, Yancey & Company on the respondent, Latham & Company, which said drafts were accepted by or for said Latham & Company, and which were for the sum of to-wit, 2,936,430 francs, or $572,603.85, and that said amount approximated the market value of said seventy-eight hundred bales of cotton at the time they were drawn; said drafts were drawn from time to time from January 27th, 1910, to February 16th, 1910.

Complainant further avers that said drafts were paid by or for Latham & Company, and that their purpose in paying said drafts was to obtain the bills of lading thereto attached, and by such means to accomplish the purchase of and to secure the bales of cotton called for by said bills of lading; and complainant avers that, by the payment of said drafts to which were attached said spurious bills of lading, respondent, Latham & Company, became and were creditors of said bankrupt in the sum of to-wit, $572,603.85; and that they were such creditors on to-wit, April 14, 1910.

Complainant further avers that, as a matter of fact, the spurious bills of lading before mentioned were not issued by the carriers, which it was purported had issued them, and the cotton called for by said bills of lading had not been received by the carriers which purported to issue them, and that said papers purporting to be bills of lading were wholly void and of no effect.

Complainant further charges that, on to-wit, April 14, 1910, one Pierre Walther, who was the agent of and who acted for said Latham & Company in the premises, demanded of said Knight, Yancey & Company the delivery to said Latham & Company of genuine and valid bills of lading for, to-wit, seventy-eight hundred bales of cotton in payment and satisfaction of the aforesaid indebtedness of Knight, Yancey & Company to said Latham & Company.

Complainant charges that, on said date, and on all other dates mentioned in this bill, said Knight, Yancey & Company were insol-

vent; and that, at the time of the transfer hereinafter men-
57 tioned, said Latham & Company has reasonable cause to believe that said Knight, Yancey & Company was insolvent; that, on to-wit, April 14, 1910, Knight, Yancey & Company transferred to Latham & Company, which was then a creditor of Knight, Yancey & Company, as aforesaid, a portion of the property of said Knight, Yancey & Company, to-wit, seventy-eight hundred bales of cotton in payment of said indebtedness of said Knight, Yancey & Company to Latham & Company, with the intent to prefer said Latham & Company over the other creditors of said Knight, Yancey & Company; that the effect of such transfer will be to enable said Latham & Company to obtain a greater per cent of the indebtedness due them by said Knight, Yancey & Company than the other unsecured creditors of said Knight, Yancey & Company unless said transfer is set aside by this honorable court; and that, at the time of said transfer, said Latham & Company had reasonable cause to believe that, by said transfer, said bankrupt intended to prefer said Latham & Company over its other creditors; that said transfer was made by said Knight, Yancey & Company to said Latham & Company within four months prior to the time said Knight, Yancey & Company were adjudged bankrupts, as aforesaid.

Orator is advised by counsel, and therefore charges, that said transfer of said seventy-eight hundred bales of cotton to said Latham & Company by said Knight, Yancey & Company was, under the acts of congress relating to bankruptcy, a preferential transfer, which should be avoided, and that said seventy-eight hundred bales of cotton, or the value thereof, in equity and good conscience belong to said bankrupt estate, and should be administered for the benefit of the creditors of said bankrupt; orator further charges that the unsecured debts of said bankrupt, provable in bankruptcy, approximate the sum of to-wit, five million dollars. Orator further charges that said Knight, Yancey & Company was duly adjudged a bankrupt on to-wit, April 20, 1910, as charged in said original bill.

6th. The value of the matter in dispute in this cause exceeds, exclusive of interest and costs, the sum of two thousand dollars.

7th. Your orator, the said William S. Lovell, now submits
58 himself to the jurisdiction of this court, and offers to do equity and to perform all such terms and conditions as may be required by the court upon the granting of relief to him. Orator further assumes all obligations and undertakings of the original complainants in this cause, and claims the benefit of all prior proceedings therein.

Prayer.

The premises considered, complainant prays that respondent, Latham & Company, be ordered to answer this his supplemental bill, as well as the original bill in this cause; and that he, the said William S. Lovell, as trustee aforesaid, be substituted and made the sole complainant in this cause; and that this court will order and direct that he, the said William S. Lovell, have the benefit of all prior orders

and proceedings had in this cause, and that the bond heretofore given by respondent, Latham & Company, in this cause, to have forty-two hundred bales of cotton therein referred to forthcoming, shall be held and deemed to be for his benefit.

Complainant further prays that the transfer of the seventy-eight hundred bales of cotton, hereinbefore mentioned, to Latham & Company by said bankrupt be set aside and held for naught; that respondent, Latham & Company, by decree of this court be required to deliver said bales of cotton to complainant, to be by him administered as part of the assets of said bankrupt estate; or, that, in default thereof, complainant have a personal decree against respondent for the value of said seventy-eight hundred bales of cotton, and that execution issue against the sureties on the forthcoming bond filed in this cause by Latham & Company for the value of said forty-two hundred bales of cotton; and for such other further and general relief as in equity and good conscience he may be entitled to.

WILLIAM S. LOVELL,
As Trustee in Bankruptcy of Knight, Yancey & Company, Complainant.
PERCY, BENNERS & BURR,
RICH & HAMILTON,
Solicitors for Complainant.

59 STATE OF ALABAMA,
Jefferson County:

William S. Lovell being duly sworn deposes and says that the averments of fact contained in the foregoing are true.

WILLIAM S. LOVELL.

Subscribed and sworn to before me, this 23rd day of June, 1910.
DAVID B. ADAMS,
Notary Public.

EXHIBIT "A."

Order Approving Trustee's Bond.

At a Court of Bankruptcy Held in and for the Northeastern Division of the Northern District of Alabama, at Birmingham, Alabama, this May 26, 1910.

In District Court of the United States for the Northeastern Division of the Northern District of Alabama.

In the Matter of KNIGHT, YANCEY & COMPANY, Bankrupt. In Bankruptcy.

It appearing to the court that Wm. S. Lovell, of Birmingham, Ala., and in said district, has been duly appointed trustee of the estate of the above named bankrupt, and has given a bond with sureties for the faithful performance of his official duties, in the

amount fixed by order of the court, to-wit, in the sum of one hundred thousand dollars, it is ordered that the said bond be, and the same is hereby, approved.

May 26, 1910.

JERE MURPHY,
Referee in Bankruptcy.

A true copy.

CHAS. J. ALLISON, *Clerk.*

Filed by leave of the court August 20, 1910.

RICHARD JONES, *Clerk.*

60 *Motion by Frost and Lovell, Receivers, and Lovell, Trustee, to Dismiss Cross-bill of Knauth, Nachod & Kuhne.*

In the Circuit Court of the United States, Fifth Circuit, Southern District of Alabama, Southern Division.

In Equity. No. 279.

CLARENCE E. FROST and WILLIAM S. LOVELL, as Receivers of Knight, Yancey & Company, Bankrupts, and Joe T. Gibson, Complainants,
vs.
LATHAM & COMPANY et als., Respondents.

Come Clarence E. Frost and William S. Lovell, as receivers of Knight, Yancey & Company, bankrupts, and also comes William S. Lovell, as trustee in bankruptcy of Knight, Yancey & Company, bankrupts, and appear specially for the purpose of making this motion, and for no other purpose, and move the court to dismiss the cross-bill or petition of intervention filed in this cause by Freidrich Nachod, Max Jaffe, Wilhelm Knauth, August Stern, Oscar L. Gübelman, Arend H. Weingardt, Rollin C. Newton, Mary W. Knauth and Percival Kuhne against Edmond Latham and others, including these movants, and as grounds for this motion show:

1. That the said Clarence E. Frost and William S. Lovell are both citizens of and reside in the Northern District of Alabama, and that no valid personal service of a subpœna to answer said cross-bill or petition of intervention has been had or can be had upon them; and that the subject matter of said cross bill or petition of intervention is not within the jurisdiction of this honorable court, and that no valid order of publication can be made in this cause requiring these movants to answer said bill.

2. Because this court is without jurisdiction to hear and determine the matters and things set forth in said cross-bill or petition of intervention in the absence of voluntary appearance thereto by these movants, and that these movants have not voluntarily appeared to plead to said cross bill or petition of intervention.

61 C. E. FROST,
As Receiver of Knight, Yancey & Company, Bankrupts.
WILLIAM S. LOVELL,
As Receiver of Knight, Yancey & Company, Bankrupts.
WILLIAM S. LOVELL,
As Trustee of Knight, Yancey & Company, Bankrupts.
PERCY, BENNERS & BURR,
RICH & HAMILTON,

STATE OF ALABAMA,
Jefferson County:

William S. Lovell being duly sworn deposes and says that he is authorized to make this affidavit for the movants in the above cause, and that this motion is not interposed for the purpose of delay, and that the statements of fact therein contained are true.

WILLIAM S. LOVELL.

Subscribed and sworn to before me, this the 3rd day of September, 1910.

PAUL D. THOMAS,
Notary Public.

Filed September 5, 1910.

RICHARD JONES, *Clerk.*

Motion of Lovell, Trustee, to Strike from the File the Answer of Knauth, Nachod & Kuhne to Original Bill.

In the Circuit Court of the United States, Fifth Circuit, Southern District of Alabama, Southern Division.

In Equity. No. 279.

CLARENCE E. FROST and WILLIAM S. LOVELL, as Receivers of Knight, Yancey & Company, Bankrupts, and Joe T. Gibson, Complainants,

vs.

LATHAM & COMPANY et al., Respondents.

62 Comes William S. Lovell, as trustee in bankruptcy of Knight, Yancey & Company, bankrupts, and the present sole complainant in the above entitled cause and appears specially for the purpose of making this motion and for no other purpose, and moves the court to strike from or take off the files in this cause a certain paper in writing that purports to be the answer of Friedrich Nachod, Max Jaffe, Wilhelm Knauth, August Stern, Oscar L. Gubelman, Arend H. Weingardt, Rollin C. Newton, Mary W. Knauth and Percival Kuhne, composing partnership firm of Knauth, Nachod & Kuhne, to the amended bill of complaint in this cause, and as grounds for this motion show, (such grounds being separate and several):

1. That there is nothing in the pleadings in this cause or the practice of this court authorizing or justifying the attempt of said Nachod and others to make said paper an answer in these proceedings.

2. That there is nothing in the pleadings in this cause or the practice of this court that authorizes or justifies the attempt by the said Nachod and others to make themselves parties defendant in this cause.

3. That there is nothing in the pleadings in this cause or the practice of this court that authorizes or justifies the attempt of the said

Nachod and others to make themselves party defendants in this cause as attempted in said so-called answer.

WILLIAM S. LOVELL,
As Trustee for Knight, Yancey & Company, Bankrupts.
RICH & HAMILTON,
PERCY, BENNERS & BURR,
Solicitors for Movant.
RICH & HAMILTON,
Solicitors for Movant.

Filed Sept. 5, 1910.

RICHARD JONES, *Clerk.*

63 *Demurrers of Latham & Company to Cross-bill — Knauth, Nachod & Kuhne.*

Circuit Court of the United States, Fifth Circuit and Southern District of Alabama.

In Equity. No. 279.

CLARENCE E. FROST and WILLIAM S. LOVELL, Receivers, et al.
vs.
LATHAM & COMPANY et al.

The joint and several demurrer of Edmond Latham, Charles W. Latham and Raoul Latham, composing the copartnership of Latham & Company, defendants, to the cross-bill of complaint of Friedrich Nachod, Max Jaffe, Wilhelm Knauth, August Stern, Oscar L. Guebelman, Arend H. Weingardt, Rollin C. Newton, Marias W. Knauth and Percival Kuhne.

These defendants respectively by protestation not confessing or acknowledging any or all of the matters and things in the said plaintiffs' cross-bill to be true in the manner and form, as the same are therein set forth and alleged, do demur thereto and for cause of demurrer show:

First.

That this court is without jurisdiction ratione materiæ to hear or determine the matters and things in the bill and supplemental bill of complaint herein as therein pleaded and set forth and is, therefore, also without jurisdiction to hear and determine the matters and things in said cross bill of complaint as therein pleaded and alleged:

Second.

That the cross complainants have no capacity, power or authority to institute, maintain or prosecute said cross-bill in the form and for the matters and things therein alleged:

Third.

That the cross complainants have not, in and by said cross-bill of complaint made and stated, any such cause of action as does
64 or may entitle them to any such relief as is thereby sought and prayed for against and from these defendants.

Wherefore these defendants pray the judgment of this honorable court whether they shall be compelled to make any further or other answer to the said bill or any of the matters and things therein contained, and pray to be hence dismissed with their reasonable costs in this behalf sustained.

HOWE, FENNER, SPENCER & COCKE,
Solicitors for Latham & Company, Defendants.

STATE OF LOUISIANA,
Parish of Orleans:

Walker B. Spencer makes solemn oath and says: That he is a member of the law firm of Howe, Fenner, Spencer & Cocke, the solicitors for the defendants, Latham & Company; that none of the members of said firm are present in the United States; that the foregoing demurrer is not interposed for delay.

W. B. SPENCER.

Sworn to and subscribed before me this 13th day of September, 1910.

PIERRE D. OLIVIER,
Notary Public.

I certify hereby that in my opinion the foregoing demurrer is well founded in point of law.

W. B. SPENCER,
Solicitor for Defendants, Latham & Company.

Filed Sept. 15, 1910.

RICHARD JONES, *Clerk.*

Demurrers of American Surety Company to Cross-bill of Knauth, Nachod & Kuhne.

Circuit Court of the United States, Fifth Circuit and Southern District of Alabama.

In Equity. No. 279.

CLARENCE E. FROST and WILLIAM S. LOVELL, Receivers, et al.
vs.
LATHAM & COMPANY et al.

65 The demurrer of the American Surety Company of New York to the cross-bill of Friedrich Nachod, Max Jaffe, Wilhelm Knauth, August Stern, Oscar L. Guebelman, Arend H. Weingardt, Rollin C. Newton, Marias W. Knauth, and Percival Kuhne.

This defendant by protestation not confessing or acknowledging any or all of the matters and things in said plaintiffs' cross-bill to be true in the manner and form therein set forth and alleged, do demur thereto and for cause of demurrer shows:

First.

That this court is without jurisdiction ratione materiæ to hear and determine the matters and things in the bill of complaint and supplemental bill of complaint herein, as therein pleaded and set forth, and is, therefore, also without jurisdiction to hear and determine the matters and things in said cross-bill of complaint as therein pleaded and alleged:

Second.

That said cross complainants have no capacity, power or authority to institute, maintain or prosecute said cross-bill in the form and for the matters and things therein alleged;

Third.

That the cross complainants have not in and by said cross-bill of complaint made and stated any such cause of action sought and prayed for from and against these defendants.

Wherefore these defendants pray the judgment of this court whether it shall be compelled to make any further or other answer to the said bill or any of the matters and things therein contained, and prays to be hence dismissed with its reasonable costs in this behalf sustained.

HOWE, FENNER, SPENCER & COCKE,
Solicitors for American Surety Company of New York, Defendant to Cross-bill.

STATE OF LOUISIANA,
Parish of Orleans:

Peter F. Pescud makes solemn oath and says: That he is the manager of the American Surety Company of New York
66 in the State of Louisiana and the proper person to make this affidavit; that the foregoing demurrer is not interposed for delay.

PETER F. PESCUD.

Sworn to and subscribed before me this 14th day of September, 1910.

PIERRE D. OLIVIER,
Notary Public.

I certify hereby that in my opinion the foregoing demurrer is well founded in point of law.

W. B. SPENCER,
Solicitor for American Surety Company of New York.

Filed Sept. 15, 1910.

RICHARD JONES, *Clerk.*

Answer of Latham & Company to Original Bill and Supplemental Bill.

United States Circuit Court for the Fifth Circuit and Southern District of Alabama, Southern Division.

CLARENCE E. FROST and WILLIAM S. LOVELL, as Receivers of Knight, Yancey & Company, Bankrupts, and Joe T. Gibson, Complainants,

vs.

LATHAM & COMPANY, a Partnership, et als., Defendants.

WILLIAM S. LOVELL, as Trustee in Bankruptcy of Knight, Yancey & Company, Bankrupt, Substituted Plaintiff,

vs.

LATHAM & COMPANY, a Partnership, Defendants.

The joint and several answer of Edmond Latham, Charles W. Latham and Raoul Latham to the original bill of complaint of Clarence E. Frost and William S. Lovell, as receivers of Knight, Yancey & Company, bankrupts, and Joe T. Gibson, and to the supplemental bill of complaint of William S. Lovell, as trus-
67 tee in bankruptcy of Knight, Yancey & Company, bankrupt.

These defendants respectively, now and at all times hereafter saving unto themselves all and all manner of benefit or advantage of exception or otherwise that can or may be taken to the many errors, uncertainties and imperfections in said original and said supplemental bills of complaint contained, and expressly reserving

the benefit of the demurrers, pleas and objections heretofore filed and interposed by these defendants and overruled by the court, for answer to so much of said original bill of complaint as these defendants are advised it is necessary to answer unto, and for answer to the supplemental bill of complaint, or so much thereof as these defendants are advised it is necessary or material for them to make answer to, answering say:

1. They admit the allegations contained in the first paragraph of said original and said supplemental bills contained, except the allegation contained in said original bill to the effect that the firm of Latham & Company is a partnership composed of Edmond Latham, Charles W. Latham, Raoul Latham and Pierre Walther; they deny that Pierre Walther is a member of said firm. And except the allegation contained in said paragraph of said original bill to the effect that Joe T. Gibson was, at the time of the filing of said bill, or now is a creditor of Knight, Yancey & Company in the sum of $15,000, or any other sum.

2. Answering the allegations contained in the second paragraphs of said supplemental bill, these defendants admit that on or about April 29th, 1910, Clarence E. Frost and William S. Lovell, as receivers in bankruptcy of Knight, Yancey & Company, bankrupt, and Joe T. Gibson, an alleged unsecured creditor of said bankrupt firm, filed the original bill herein against Latham & Company, a partnership, and others, but as to the purpose of said original bill and the averments therein contained, these defendants beg leave to refer to said original bill for a more accurate and proper statement of the purpose and allegations thereof.

3. Answering the allegations contained in the third paragraph of said supplemental bill, these defendants admit that this
68 honorable court caused 4,200 bales of cotton, the property of these defendants, then in the possession of the Elder, Dempster Steamship Line for purposes of transportation to these defendants in Havre, France, to be seized and sequestered at the instance of said Clarence E. Frost and William S. Lovell, as receivers of Knight, Yancey & Company, bankrupt, and Joe T. Gibson, an alleged unsecured creditor of said bankrupts, and that thereafter, upon the appearance and application of these defendants, said court entered its order and decree permitting these defendants to file their bond in this cause, with good and solvent surety conditioned that these defendants would have forthcoming, within sixty days from the date of any final decree of this honorable court, the cotton in said bond mentioned to the proper officers of this court, or in default, would pay and satisfy such decree as might be rendered against them in this cause; and these defendants, for a more particular and accurate statement of the terms and conditions of said order and decree of sequestration of said bond and of the proceedings had, beg leave to refer to the same and make same a part of this answer. They admit that, upon the execution and approval of said bond, said 4,200 bales of cotton were delivered by the marshal to these defendants.

4. Answering the allegations contained in the fourth paragraph of said supplemental bill of complaint, these defendants admit that

at the time said original bill of complaint was filed herein by said Clarence E. Frost and William S. Lovell, as receivers of Knight, Yancey & Company, bankrupt, and Joe T. Gibson, an alleged unsecured creditor, no trustee in bankruptcy of said bankrupt estate had been appointed, and that the first meeting of the creditors of said bankrupt estate was held on the 26th day of May, 1910, and that at said meeting William S. Lovell was elected the trustee in bankruptcy of the estate of Knight, Yancey & Company, bankrupt.

5. Answering the allegations contained in the second paragraph of said original bill of complaint, and the allegations contained in the fifth paragraph of said supplemental bill of complaint, these defendants say that some of the matters and things in said paragraphs alleged are true, but that most of the allegations in said paragraphs are untrue, and these defendants in the circumstances
69 prefer to deny all the matters and things in said paragraphs contained as therein alleged and pleaded, and to state the real truth of the transactions between said Knight, Yancey & Company and the firm of Latham & Company, and they therefore aver the true facts to be as follows:

The firm of Knight, Yancey & Company for many years prior to 1910 were engaged at Decatur, Alabama, in the business of buying cotton from various persons in the cotton growing states of the United States and of selling the same (either before or after actual purchase thereof by them) to spinners or dealers in various states of the United States, or in foreign countries, either for immediate or future delivery. And, as is customary with persons engaged in said business, they frequently sold cotton for future delivery when, at the date of the agreement to sell, they did not actually own or have in their possession the kind of cotton or the number of bales sold by them, but relied on their ability to acquire same in the open market before the time of delivery specified in their said contracts to sell arrived.

The firm of Latham & Company had its principal place of business in Havre, France, and were engaged in buying cotton for their own account in the United States and elsewhere and of selling the same for immediate or future delivery to spinners and manufacturers in Europe. In the course of said business it was customary to purchase cotton in the United States for future delivery, to enable them to obtain deliveries of cotton purchased by them in the United States at approximately the dates that they owed deliveries to the spinners to whom they had sold. Such sales and purchases were not of any particular or specified cotton, but only of cotton of certain specified grades and qualities.

The firm of Latham & Company had for a number of years prior to the year 1910 and in the usual course of business made purchases of cotton in this manner from Knight, Yancey & Company; and as necessarily the offers to sell or buy cotton and the acceptance thereof must be by exchange of cables between them, as a matter of convenience an understanding was reached between said firms prior to entering into any relations or having any transactions, covering the general terms and conditions of offers and acceptances passing be-

tween them, which were to be considered as embodied or
70 understood in all agreements between them for the sale and purchase of cotton, and these defendants annex hereto as "Exhibit A" a copy of said general terms of agreement between said two firms, and pray that it may be taken as a part hereof; that on or about the 13th day of January, 1910, these defendants made a cable offer to said Knight, Yancey & Company to purchase 4,800 bales of cotton of a certain quality and at a certain price therein named, said cotton to be shipped so as to reach the ocean carrier in the months of February-March, and on the same day, by cable, said Knight, Yancey & Company accepted said offer; and on or about the 3rd day of February, 1910, said Knight, Yancey & Company offered by cable to sell to said Latham & Company 3,000 bales of cotton of a certain quality and at a certain price therein named, said cotton to be shipped so as to reach the ocean carrier in the months of March-April, and on the same day, by cable, said Latham & Company accepted said offer; thereby in each case an agreement to sell and purchase was perfected, and Knight, Yancey & Company became obligated to sell and deliver, and said Latham & Company became obligated to accept and pay for, the number of bales of cotton of the character and at the prices and upon the terms and conditions in said agreements of sale and purchase agreed upon; that by the terms of said general agreement, which as aforesaid was to be incorporated and taken as a part of such transactions, said Knight, Yancey & Company had a right to demand, and said Latham & Company were obligated to make payment for said cotton sixty days after sight of draft drawn by said Knight, Yancey & Company on said Latham & Company for the amount of the agreed purchase price of hundred bale lots of said cotton, said drafts to be accompanied by policies or certificates of insurance duly endorsed to said Latham & Company and by evidence of delivery of said cotton to a carrier, which fact of delivery was to be evidenced by a bill of lading of a carrier endorsed to Latham & Company; that prior to April 1st, 1910, said Knight, Yancey & Company had drawn sixty day drafts on said Latham & Company aggregating the sum of about 2,936,430 francs, or about $572,603.85 in United States currency, representing the purchase price of said 7,800 bales of cotton, to which said drafts Knight, Yancey & Company had attached policies or certificates of insurance
duly endorsed to said Latham & Company, and documents
71 purporting to be bills of lading evidencing the delivery of said cotton to carriers for transportation, endorsed to Latham & Company, and said Latham & Company, believing that said cotton had been so delivered to said carriers and that under the terms of said general agreement the payment for said cotton was due Knight, Yancey & Company, accepted said drafts; that in truth said Knight, Yancey & Company, although having the cotton, had not at the time some of said drafts were accepted delivered the cotton to the carriers, as they had induced said Latham & Company to believe, and in truth the documents or bills of lading attached to said drafts purporting to evidence delivery of said cotton to said carriers were

spurious; thereby said Knight, Yancey & Company fraudulently induced said Latham & Company to pay for said cotton in advance of the time agreed upon, but said Knight, Yancey & Company were thereby in no wise released from their agreement to sell or deliver the same, or was their agreement to sell and deliver in any wise affected save at the option of said Latham & Company; thereafter at various dates prior to the adjudication in bankruptcy of said Knight, Yancey & Company they did deliver to said Latham & Company, through the medium of common carriers, 7,800 bales of cotton which they had agreed to sell to said Latham & Company, and particularly had delivered to Latham & Company, through carriers at the port of Mobile, Alabama, the 4,200 bales of cotton seized and sequestered in this cause, as in law they were bound and had a right to do in fulfillment of the obligations of their said agreements to sell.

These defendants are informed and believe, and therefore aver, that it *is* was not the object or purpose of said Knight, Yancey & Company to actually defraud these defendants by inducing them to purchase and pay for cotton which Knight, Yancey & Company never intended to deliver, but that it was always the intention and purpose of said Knight, Yancey & Company to deliver said cotton to these defendants. The object and purpose of said Knight, Yancey & Company in so inducing these defendants to pay for said cotton in advance of the time agreed upon was to enable them to obtain ready money at a rate of interest much lower than they could obtain it in this country, as it had been the custom for many years in said business that, where shipments of cotton were delayed
72 beyond the contractural period, the purchaser had a right to claim, and the seller was obliged to pay interest on the purchase price at the rate of not exceeding five per cent per annum, whereas Knight, Yancey & Company could not obtain money in Decatur, Alabama, or elsewhere in the United States at rates less than eight or ten per cent per annum, and while said Knight, Yancey & Company had not at the times when said drafts were accepted by Latham & Company delivered all of the cotton which they had agreed to sell and deliver to these defendants, yet at said times they had acquired all, or nearly all, of said cotton for that purpose, and had delivered a large part and were engaged in delivering the rest of said cotton to carriers in accordance with their said agreements to sell, and in fact prior to the adjudication in bankruptcy had delivered all of said cotton to carriers for the purposes aforesaid, and had received bills of lading therefor from said carriers; that it was the custom of said Knight, Yancey & Company, and at all times their purpose and intention, when they did deliver such cotton to said carriers and received bills of lading therefor, to make said deliveries in marks and weights and places of origin correspond as closely as might be with the description of the cotton mentioned in said spurious bills of lading, and to hold, and they did hold, in their possession said genuine bills of lading until such time as such cotton might reach its destination, where it would be delivered to the purchasers by the carriers on said spurious bills of lading, and thereafter to destroy said genuine bills of lading.

Further answering the allegations of said paragraphs of said original and supplemental bills of complaint, these defendants admit that it is true that Pierre Walther, their representative, did, on or about April 14th, 1910, demand and receive from said Knight, Yancey & Company the genuine bills of lading covering said cotton, but aver that in law and good conscience said Knight, Yancey & Company held said bills of lading only as the trustees of these defendants, to whom said cotton belonged, and that said Knight, Yancey & Company had no right in law to hold the same adversely to these defendants, and that these defendants had the right in law to demand the delivery thereof from said Knight, Yancey & Company at any time, but they expressly deny that said bills of lading were demanded or received in payment of any sum of money due these defend-
73 ants by Knight, Yancey & Company, or that the delivery thereof in law constituted a transfer of property in payment of a pre-existing debt. They expressly deny that they knew, or had any reasonable cause to know before said delivery or at the time thereof, or until the adjudication in bankruptcy, that Knight, Yancey & Company were insolvent, if it in fact at any such time they were insolvent, which is denied, but on the *contract* they aver that they believed that said Knight, Yancey & Company were abundantly solvent; and they expressly deny that Knight, Yancey & Company intended to prefer these defendants over other creditors, or that these defendants had any reasonable grounds to believe that said Knight, Yancey & Company intended to prefer them, and deny that any act done by Knight, Yancey & Company or by these defendants or their representative in reference to said cotton was in law a preference.

Except as herein admitted these defendants deny each and every allegation in said paragraphs of said bills of complaint contained.

6. Except as herein above admitted or denied or answered, these defendants deny all and singular the allegations in said original and said supplemental bills of complaint contained.

Wherefore, having fully answered unto the said bills of complaint in so far as these defendants are advised it is necessary for them to answer, they pray that the complainants' demands may be rejected and that they be hence dismissed with their costs in the premises unjustly sustained.

HOWE, FENNER, SPENCER & COCKE,
Solicitors for Defendants.

Filed November 8, 1910.

RICHARD JONES, *Clerk.*

74 *Decree Allowing Knauth, Nachod & Kuhne to File Amended Cross-bill.*

Circuit Court of the United States for the Southern District of Alabama.

Cross-bill. In Equity. 279.

FRIEDRICH NACHOD and Others, Complainants,
against
EDMOND LATHAM and Others, Defendants.

In this cause it is ordered, adjudged and decreed, as follows, viz:

1. That the complainants above named be and hereby are granted leave to file their amended cross-bill, verified on or about the 16th day of December, 1910, in this suit; and that the same be filed accordingly and take the place of the original cross-bill of said complainants, verified on or about the 27th day of June, 1910, subject to any objections that may be raised by adverse parties.

2. That the above entitled cross-suit be and hereby is discontinued, as to the Louisville & Nashville Railroad Company, a party defendant to the original cross-bill but not a party to the amended cross-bill.

3. That the issue and service of the subpœna ad respondendum and of the alias subpœna ad respondendum and of any other order or process upon or subsequent to the filing of the complainants' cross-bill be and hereby is deemed to have been issued and served upon said amended cross-bill.

4. That the defendants Edmond Latham, Charles Latham, Raoul Latham, American Surety Company of New York, John W. Knight, William J. Yancey, William D. Nesbitt, Robert H. Nesbitt, Clarence E. Frost and William S. Lovell, as receivers in bankruptcy of Knight, Yancey & Company, and William S. Lovell, as trustee in bankruptcy of Knight, Yancey & Company, be and each of them hereby is directed and required to appear, plead, answer or demur to the said amended cross-bill on or before the next rule day occurring twenty days after the filing thereof.

75 5. It is further ordered that a copy of said amended cross-bill be given the solicitors for Latham & Co., and William S. Lovell, trustee in bankruptcy of Knight, Yancey & Co.

Made this December 20, 1910.

HARRY T. TOULMIN, *Judge.*

Filed and entered December 20, 1910.

RICHARD JONES, *Clerk.*

Amended Cross-bill of Knauth, Nachod & Kuhne and Exhibits Thereto.

In the Circuit Court of the United States, Southern District of Alabama, Southern Division.

Equity. No. 279.

FRIEDRICH NACHOD, MAX JAFFE, WILHELM KNAUTH, AUGUST Stern, Oscar L. Gubelman, Arend H. Weingardt, Rollin C. Newton, Mary W. Knauth, and Percival Kuhne, Complainants,
against
EDMOND LATHAM, CHARLES LATHAM, RAOUL LATHAM, AMERICAN Surety Company of New York, John W. Knight, William J. Yancey, William D. Nesbitt, Robert H. Nesbitt, Clarence E. Frost, and William S. Lovell, as Receivers in Bankruptcy of the Estate of Knight, Yancey & Company, Bankrupts; William S. Lovell, as Trustee in Bankruptcy of the Estate of Knight, Yancey & Company, Defendants.

To the Honorable the Judges of the Circuit Court of the United States for the Southern District of Alabama, Southern Division:

Friedrich Nachod, of Leipzig, Germany, and a citizen or subject of Germany; Max Jaffe, of Leipzig, Germany, and a citizen or subject of Germany; Wilhelm Knauth, of Arrochar, county of
76 Richmond, city and State of New York, and a citizen or subject of Germany; August Stern, of Leipzig, Germany, and a citizen or subject of Germany; Oscar L. Gubelman, of West Orange, Essex county, New Jersey, and a citizen of the State of New Jersey; Arend H. Weingardt, of Montclair, Essex county, New York, and a citizen or subject of Germany; Rollin C. Newton, of Scarsdale, Westchester county, New York, and a citizen of the State of New York; Mary W. Knauth, of the county, city and State of New York, and a citizen of the State of New York; and Percival Kuhne, of the county, city and State of New York, and a citizen of the State of New York, bring this their amended cross-bill of complaint (or their petition or bill of complaint in intervention, if the court hold that it should be so denominated) against Edmond Latham, of Havre, France, and a citizen of the French republic; Charles Latham, of Havre, France, and a citizen of the French republic; Raoul Latham, of Havre, France, and a citizen of the French republic; American Surety Company of New York, N. Y., a corporation organized under the laws of the State of New York, but also doing business in Mobile, Alabama; Clarence E. Frost and William S. Lovell, as receivers in bankruptcy of Knight, Yancey & Company, bankrupts, having been appointed by the United States District Court, in Bankrutpcy, for the Northern District of Alabama, Northeastern Division; John W. Knight, of Decatur, Alabama, and a citizen of the State of Alabama; William J. Yancey, of Memphis, Tennessee, and a citizen of the State of Tennessee; William D. Nesbitt, of Birmingham, Alabama,

and a citizen of the State of Alabama; Robert H. Nesbitt, of Spartanburg, South Carolina, and a citizen of the State of South Carolina; and William S. Lovell, as trustee in bankruptcy of the estate of Knight, Yancey & Company, having been appointed by the United States District Court, in bankruptcy, for the Northern District of Alabama, Northeastern Division. And thereupon your orators make this their amended cross-bill of complaint, and upon information and belief, say:

1. The following papers are on file and the proceedings evinced thereby have been had in the suit in this court originally entitled,

Clarence E. Frost and W. S. Lovell, as Receivers of Knight,
77 Yancey & Company, Bankrupts, and Joe T. Gibson, complainants, vs. Latham & Company, a Partnership, et al., Respondents. In Equity, No. 279, to-wit:

(*a*) Bill of complaint verified on or about April 29, 1910, with the exhibits thereto annexed.

(*b*) Decree for sequestration, dated on or about May 3, 1910.

(*c*) Receipt of the clerk for $6,714.82, dated on or about May 9, 1910.

(*d*) Bond of the Receivers, Joe T. Gibson and National Surety Company, dated on or about May 3, 1910.

(*e*) Writ of sequestration and marshal's return thereto, the writ bearing teste on or about May 4, 1910.

(*f*) Petition or application to amend said bill making all persons claiming an interest in the cotton in question parties defendant, verified on or about May 5, 1910.

(*g*) Order amending bill as asked for in said petition, granted on or about May 5, 1910.

(*h*) Notice of motion, returnable on or about May 6, 1910, to modify the decree granted on or about May 3, 1910.

(*i*) Decree of modification, granted on or about May 6, 1910.

(*j*) Petition of Latham & Company, verified on or about May 14, 1910, for the release of 4,300 bales of the sequestrated cotton. (4,200 B. C. formally sequestrated.)

(*k*) Decree for release upon furnishing a bond, granted on or about May 14, 1910.

(*l*) Bond of Latham & Company and the American Surety Company given for the release of the sequestrated cotton, being in the amount of $325,000 and dated on or about May 14, 1910.

(*m*) Demurrer by Latham & Company to the bill of complaint, verified on or about May 24, 1910.

78 The suit above mentioned is the suit in which this amended cross-bill is filed. The papers above mentioned are referred to and, by such reference, the contents thereof and the proceedings evinced thereby are herein recited. Such recital is made by reference for the sake of brevity and the consequent abridgment of the work, both of the court and of all parties concerned.

2. Your orators, Knauth, Nachod & Kuhne (being thus called upon to do so by the said amendment to said bill in this suit, making all persons claiming an interest in the 7,800 bales of cotton in question parties defendant) duly appeared in the said suit and filed

their answer to said bill of complaint and also their cross-bill in lieu of which this amended cross-bill is filed. Since said cross-bill was filed the following papers have been filed and the proceedings evinced thereby had, to-wit:

(*n*) Decree overruling said demurrer of Latham & Company and certain objections made by them, to the filing of a supplemental bill by William S. Lovell, as trustee; substituting William S. Lovell as trustee for the original complainants and making him the sole complainant; dismissing the cause as to the Louisville & Nashville Railroad Company and others not parties to said cross-bill of Knauth, Nachod & Kuhne and as to John W. Knight, William D. Nesbitt, Robert H. Nesbitt, and William J. Yancey; and also amending the original bill of complaint in a number of particulars.

(*o*) Supplemental bill of William S. Lovell, trustee, verified on or about June 23, 1910, together with the exhibits thereto attached.

The papers above mentioned are also referred to and, by such reference, the contents thereof and the proceedings evinced thereby are herein recit-d. Such recital is also made by reference for the sake of brevity and the consequent abridgment of the work, both of the court and of all parties concerned.

79 3. The above named American Surety Company was not an original party to said original suit but voluntarily made itself a party by the execution of the bond above mentioned, and subjected itself in that way to the jurisdiction of the court, and is, therefore, made a party to this amended cross-bill. The said bond is in the sum of $325,000.00 and is to the effect that said Latham & Company will have forthcoming and deliver to the proper officer of this court, within sixty days from the date of and final decree of this court, said cotton; or will pay and satisfy such decree as may be rendered. The above named William S. Lovell, as trustee, was not originally a party to said original suit but was appointed trustee in *k*ankruptcy of the estate of Knight, Yancey & Company, on or about the 26th day of May, 1910, and gave the prescribed bond and entered upon the performance of his duties as such trustee and thereupon succeeded to all the right, title and interest of the said receivers and has been substituted as sole complainant therein. He is, therefore, made a party to this amended cross-bill. The receivers, the original complainants, have been succeeded by the trustee but they have been retained in office for the purpose of continuing any litigation inaugurated by them and being parties defendant to the original cross-bill and subject to the jurisdiction of the court, are retained in this amended cross-bill for the purpose of sustaining proceedings, if any, which the trustee may be held disqualified to sustain.

4. The Louisville & Nashville Railroad Company was made a party defendant to said original bill. It was made a party defendant to the original cross-bill of your orators, Knauth, Nachod & Kuhne, for that reason and because your said orators wanted it to account for certain cotton that it had received from or for delivery to the bankrupts, Knight, Yancey & Company, which cotton was subject to a charge in favor of Knauth, Nachod & Kuhne. Since the original cross-bill was filed your orators, Knauth, Nachod & Kuhne, have had

access to a copy of a statement purporting to account for all cotton, received by said railroad company from or for delivery to the bankrupts, Knight, Yancey & Company, in which your orators, Knauth, Nachod & Kuhne can have any interest. There is no longer any need, therefore, that said railroad company render an account
80 of said cotton and, the original suit having been discontinued as to it, the cross-suit may also be discontinued as to it. Said railroad company is, therefore, not made a party to this amended cross-bill.

5. The money paid by said receivers, as prescribed in the above decree for sequestration, was the proceeds of certain cotton that had come into their hands as a part of the estate of Knight, Yancey & Company and had been sold by them. The cotton so sold by them, or some parts thereof, had been paid for by the bankrupts with the proceeds of money belonging to your orators, the present complainants, the firm of Knauth, Nachod & Kuhne, and was subject to a charge in their favor and to that extent equitably belonged to said firm, as hereafter more fully set forth.

6. The seventy-eight hundred and eighty-two (7,882) bales of cotton or property, mentioned in the bill of complaint in the original suit, or some parts thereof, had been paid for by the bankrupt firm of Knight, Yancey & Company with the proceeds of money belonging to your orators, the present complainants, the firm of Knauth, Nachod & Kuhne, and was subject to a charge in their favor and to that extent equitably belonged to said firm, as hereafter more fully set forth.

7. During the period from the 5th to the 18th day of April, 1910, your orators, the present complainants, Friedrich Nachod, Max Jaffe, Wilhelm Knauth, August Stern, Oscar L. Gubelman, Arend H. Weingardt, Rollin C. Newton, Mary W. Knauth, and Percival Kuhne, were and prior thereto had been and still are co-partners in business, doing business at New York, N. Y., and at Leipzig, Germany, under the firm name and style of Knauth, Nachod & Kuhne and bring this, their amended cross-bill of complaint, (or their petition or complaint in intervention, if the court hold that it should be so denominated), on behalf of their said firm.

8. During the said period from the 5th to the 18th day of April, 1910, and prior thereto and thereafter until their adjudication of bankruptcy the above named defendants, John W. Knight, William J. Yancey, William D. Nesbitt and Robert H. Nesbitt were
81 co-partners in business, doing business at Decatur, Alabama, under the firm name and style of Knight, Yancey & Company as dealers in cotton. They also maintained branch offices at various other places, particularly at Selma, Ala., and Mobile, Ala. During the said period and until their adjudication of bankruptcy and the present time, said Knight, Yancey & Company were hopelessly insolvent and knew that they were insolvent and unable to pay their debts. All the acts of said Knight, Yancey & Company hereafter set forth, were committed by them while insolvent and while they knew that they were insolvent and unable to pay their honest debts.

9. During said period from the 5th to the 18th day of April, 1910, the firm of Knight, Yancey & Company caused to be issued and sent to New York, N. Y., some thirteen drafts or bills of exchange to which were attached, among other things thirteen export bills of lading purporting to show that thirteen hundred (1,300) bales of cotton had been delivered by said Knight, Yancey & Company to common carriers for transportation to Liverpool, England, and to Bremen, Germany, and to Reval, Russia, or to other European ports, and for delivery, at the various ports of destination, to the order of said Knight, Yancey & Company, some of said bills of lading purporting to have been issued by the Southern Railway Company and some purporting to have been issued by the Louisville & Nashville Railroad Company. Said drafts were drawn to the order of Knight, Yancey & Company and the cotton mentioned in said bills of lading was to be delivered to the order of said Knight, Yancey & Company and the insurance certificates thereto attached were payable, in case of loss, to said Knight, Yancey & Company and all were endorsed by said Knight, Yancey & Company. Said drafts, bills of lading and other papers were forwarded to one F. van Gerpen, as the agent or broker of said Knight, Yancey & Company or to other agents for the purpose of having the same sold and delivered to your orators, Knauth, Nachod & Kuhne, or other purchasers, as genuine and valid documents and with the intent that the said Knauth, Nachod & Kuhne, or other purchasers, should be misled and deceived into the belief that the said bills of lading were genuine and represented actual shipments of the thirteen hundred (1,300) bales of cotton therein mentioned and should purchase the same on the
82 strength thereof. Said Knauth, Nachod & Kuhne were in fact misled and deceived and did believe that said bills of lading were genuine and represented actual shipments of the thirteen hundred (1,300) bales of cotton therein mentioned; and, on the faith thereof, took and received the said drafts, with said bills of lading attached, and delivered to the said F. van Gerpen or other agents of Knight, Yancey & Company the sum of $98,005.58, except that $154.20 thereof were protest fees and cable charges subsequently paid. Said money was received by said F. van Gerpen or others as the agent or agents and broker or brokers and for the account of said Knight, Yancey & Company and (possibly with broker's commissions deducted) was during the period between the said dates or at about that time, delivered to the said Knight, Yancey & Company as the proceeds of said drafts and bills of lading, except what may have been subsequently paid to the said receivers and to said trustee.

10. Some of said drafts matured ninety days after sight and the rest sixty days after sight. The following is a statement of the date of each of the said drafts; the date of each of the said bills of lading thereto attached; the number of bales and marks of the cotton; and the amount of each of the said drafts, your orators being ready to file a copy of said drafts and of the bills of lading thereto annexed and to produce the originals thereof as the court may direct, to-wit:

Date of draft, 1910.	Date of B. L., 1910.	Number of bales cotton and marks.			Amount of drafts.
April 9	April 9	100	PALM	Reichsmarks ..	31,604
April 9	April 9	100	QEKP	Reichsmarks ..	31,394
April 9	April 9	100	RBUZ	Reichsmarks ..	31,650
April 11	April 9	100	QNNN	Francs	38,924
April 8	April 8	100	PAIY	Sterling	1,571-5-8
April 8	April 8	100	PUUN	Sterling	1,579-17-11
April 8	April 8	100	QAAR	Sterling	1,560-18-6
April 8	April 8	100	QUHH	Sterling	1,574-13-1
April 8	April 8	100	RFFF	Sterling	1,574-3-1
April 8	April 8	100	RUKR	Sterling	1,578-3-0
April 8	April 7	100	QRRT	Sterling	1,548-15-9
April 8	April 7	100	QAJJ	Sterling	1,534-16-7
April 8	April 7	100	QFNK	Sterling	1,441-8-0

83 11. The bills of lading annexed to said drafts were not signed or issued by the railroad companies mentioned therein. The cotton mentioned in said drafts and bills of lading was never delivered to the railroad companies. On the contrary, said bills of lading were signed by diverse persons, either the defendant John W. Knight or other persons unknown at this time to your orators, Knauth, Nachod & Kuhne. No cotton was delivered on said bills of lading by the carriers to your orators or to any one else as the indorsee of said Knight, Yancey & Company. Knight, Yancey & Company had not provided for the acceptance of said drafts and had not provided the drawees of said drafts with funds with which to pay the same. Said drafts were duly presented for acceptance, before the said Knauth, Nachod & Kuhne had any knowledge of the said fraud, and acceptance thereof refused. Said drafts were duly protested for non-acceptance and due notice thereof given to the said Knight, Yancey & Company and to all other parties thereto, at an expense to said Knauth, Nachod & Kuhne, in protest fees and cable charges of $154.20. Neither said drafts nor said protest fees and cable charges nor any part thereof have ever been paid to your orators, Knauth, Nachod & Kuhne; said bills of lading were drawn, executed and delivered by said John W. Knight, or other persons acting under his direction for the firm of Knight, Yancey & Company, and were delivered by the firm of Knight, Yancey & Company to the First National Bank of Decatur, Alabama, for the purpose of forwarding the same to New York for sale to your orators, Knauth, Nachod & Kuhne, or others as aforesaid. Knight, Yancey & Company, and all other persons acting with them in the execution, issue and delivery of said instruments, knew at the time that no cotton had been delivered to the railroad companies and knew that said Knauth, Nachod & Kuhne, or other purchasers, would rely on the same as being genuine and representing actual shipments of cotton and knew that the said Knight, Yancey & Company were insolvent and had no means of repaying the money obtained on said instruments and committed all of said acts for the purpose of obtaining, on the strength of said false documents and said false and fraudulent

representations, from your orators, Knauth, Nachod & Kuhne, or others, the said sum of $98,005.58. No cotton has ever been
84 received by your orators, Knauth, Nachod & Kuhne or by any one else on account of the said bills of lading. Since the discovery of the said fraud your orators, Knauth, Nachod & Kuhne, have in no wise affirmed or ratified the transaction or transactions resulting in the delivery of their said money to the said Knight, Yancey & Company, but, on the contrary, have sought to obtain and have demanded and hereby again demand the return to themselves, as the owners entitled thereto, of their said money (the amount being the sum of $98,005.58) and demand that the bankrupts, Knight, Yancey & Company and their successors, including the trustee in bankruptcy, account for the said money and for the cotton or other property paid for therewith or with the proceeds thereof and reimburse your orators, Knauth, Nachod & Kuhne, therefor with interest at 8 per cent. per annum, the legal rate in Alabama. Your orators, Knauth, Nachod & Kuhne are ready and hereby offer to surrender the said drafts, bills of lading and other documents upon being reimbursed for the said $98,005.58, with interest; or upon such other terms as the court shall decree.

12. On the delivery by said Knight, Yancey & Company of the said drafts and bills of lading thereto annexed, to the First National Bank of Decatur, Alabama, a draft or drafts was drawn by said Knight, Yancey & Company upon said F. van Gerpen, their agent or broker, or upon other drawees, for the approximate amount thereof, in money of the United States, and deposited with said bank or other depositaries and by it or them placed to the credit of said firm, the said bank or other depositaries holding collateral security ample to insure the redemption of said drafts in case of dishonor by non-acceptance or non-payment. The said draft or drafts on F. van Gerpen or others were all deposited with the First National Bank of Decatur or other depositaries together with the said foreign drafts and bills of lading during the period from the 5th to the 18th day of April, 1910, or at about that time. During the said period or at about that time and after your orators, Knauth, Nachod & Kuhne, had received said foreign drafts and the bills of lading annexed thereto and had delivered their money to said F. van Gerpen or other agents of Knight, Yancey & Company, said approximate draft or drafts in money of the United States was or were accepted
85 and paid by him or them out of said money of your orators, Knauth, Nachod & Kuhne, and said foreign drafts were all accounted for and the proceeds thereof remitted to Knight, Yancey & Company and deposited by them, with other money, in the First National Bank of Decatur or other depositary, except as some part thereof may have remained in the hands of said F. van Gerpen or other agent and been paid over to the receivers or trustee of Knight, Yancey & Company, as set forth in Schedule 17, hereto annexed. Your orators', Knauth, Nachod & Kuhne's, said $98,005.85 thus became a part of a bank credit or account receivable by Knight, Yancey & Company, which credit or account receivable was held for the benefit of your orators, Knauth, Nachod & Kuhne.

13. On or about the 20th day of April, 1910, said firm of Knight, Yancey & Company was duly adjudicated a bankrupt and on or about the 21st day of April, 1910, the said Clarence E. Frost and William S. Lovell were appointed receivers in bankruptcy of the estate of said firm and qualified, by giving the prescribed bond, and entered upon the performance of their duties as such receivers. On or about the 26th day of May, 1910, William S. Lovell was duly appointed trustee in bankruptcy for the said firm and qualified, by giving the prescribed bond, and entered upon the performance of his duties as such trustee. Neither the said Knight, Yancey & Company nor its receivers nor its trustee, nor any one else, have returned to the said Knauth, Nachod & Kuhne said $98,005.58, or any part thereof.

14. The bankrupts, Knight, Yancey & Company, having deposited the money of your orators, Knauth, Nachod & Kuhne, with other money of their own, in the First National Bank of Decatur or other depositary, held the entire bank credit or account receivable thus created for the account and in trust for the benefit of Knauth, Nachod & Kuhne, at least to the amount of the money of Knauth, Nachod & Kuhne thus deposited. At the instance of Knight, Yancey & Company, by checks or acceptances or otherwise, the said bank credit or trust fund was expended (except so far as the same may have remained on hand at the date of bankruptcy as set forth in Schedule 17 hereto annexed) for certain cotton and in the creation of
86 certain credits with certain brokers, called deposits for the purchase of cotton. Some of said broker's credits were redeemed, in whole or in part, and the money again deposited with the First National Bank of Decatur or other depositary and thus reunited with the said bank credits or accounts receivable constituting said trust fund. Some of the bank credits or accounts receivable arising from the return of the so-called deposits with brokers, were also expended for certain cotton at the instance of Knight, Yancey & Company, by checks or acceptances or otherwise. Certain of the bank credits, broker's credits and other credits, representing the said trust fund and the money of your orators, Knauth, Nachod & Kuhne, were outstanding at the time of the adjudication of bankruptcy (April 20, 1910), and have been collected by the receivers and by the trustee. Certain of the cotton paid for out of the said trust fund or the proceeds thereof has or have come into the hands of the receivers and of the trustee. The estate in bankruptcy has thus been enriched by the money of your orators, Knauth, Nachod & Kuhne; and the receivers and the trustee hold all such cotton or the proceeds thereof and all such credits or the proceeds thereof in trust for the benefit of Knauth, Nachod & Kuhne, at least to the extent of $98,005.58 and interest thereon from the said 18th day of April, 1910.

15. Your orators, Knauth, Nachod & Kuhne are not able at this time to specify all the cotton paid for out of their money and the money or bank and broker's credits subject to a charge or trust in their favor as above set forth; but annexed hereto, marked Schedule 1, is a list of certain cotton that, among other cotton, was paid for out of the money of Knauth, Nachod & Kuhne or the bank and other

credits constituting the fund or funds held by Knight, Yancey & Company for their account and in trust for their benefit. Annexed hereto and marked Schedules 2 and 3, are lists of certain payments that were made, among others, (out of the money of Knauth, Nachod & Kuhne or the bank and other credits held by Knight, Yancey & Company for their account and in trust for their benefit), for cotton which was stored in the Gulf Compress at Decatur, or elsewhere.

87 Annexed hereto, marked Schedule 4, is a list of cotton that was withdrawn from the Gulf Compress at Decatur or from other places of storage, which cotton is also among the cotton paid for by Knight, Yancey & Company, as set forth in Schedules 2 and 3 or otherwise, out of the money of Knauth, Nachod & Kuhne or out of the bank and other credits held for their account and in trust for their benefit. The cotton mentioned or referred to in Schedules 1, 2, 3 and 4 and each and every part thereof (even though paid for out of bank and other credits constituting a trust fund into which Knight, Yancey & Company had put money on credits of their own as well as the money and credits of Knauth, Nachod & Kuhne equitably belonged to Knauth, Nachod & Kuhne, at least to the amount of said $98,005.58; and the proceeds of said cotton or any part thereof in the hands of the receivers or trustee equitably belongs to Knauth, Nachod & Kuhne, at least to the extent of $98,005.58 and interest thereon.

16. Your orators, Knauth, Nachod & Kuhne are not able as yet to specify all the forms in which the cotton mentioned or referred to in Schedules 1, 2, 3 and 4 or the proceeds thereof have come into the hands of the receivers or trustee or have otherwise inured to the enrichment of the estate of said bankrupts in their or his hands; but annexed hereto are Schedules 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14 which exhibit some of the forms in which part of the said cotton or the proceeds thereof have been received by the receivers and trustee of said bankrupts or in which the bankrupt estate has been otherwise enriched out of the money of Knauth, Nachod & Kuhne and the bank and other credits constituting the fund held by the bankrupts for their benefit. The assets mentioned or referred to in said Schedules 5 to 14 inclusive equitably belong to Knauth, Nachod & Kuhne, at least to the extent that said assets or any of them represent any part of the cotton (whether mentioned or referred to in Schedules 1, 2, 3 and 4, or not), paid for out of their money and the bank or other credits constituting the said trust fund held for their benefit. Parts of the cotton mentioned in all said Schedules 5 to 14 inclusive were paid for out of the money of Knauth, Nachod & Kuhne and out of the bank and other credits constituting the said trust fund held by the said bankrupts for their benefit. As to the cotton men-

88 tioned or referred to in Schedules 5, 6 and 7, this court first acquired jurisdiction both of the res and of the parties and should determine all matters in controversy and decree complete justice. These facts should be called to the attention of the United States District Court for the Northern District of Florida, to the end that said court, if it concur, may refuse to hear the cause there pending until this suit be finally determined. By this suit is

meant all issues, whether presented by the original and supplemental bills or by this or any other cross-bill. Your orators Knauth, Nachod & Kuhne are willing that Westphalen & Company appear in this suit and that all matters relating to the cotton mentioned or referred to in Schedule 8, be here determined. Your orators, Knauth, Nachod & Kuhne are ready to assist in the prosecution of the action at law upon the bond given by the master of the steamship Inglefingen, pursuant to an order of the United States District Court for the Eastern District of Louisiana, and mentioned or referred to in Schedule 11. They are also ready to bear their proportionate share, if any, in the expense of that action. If a suit in equity can be substituted in lieu of said action at law, they are ready to appear and assert rights in the cotton in question which are prior and paramount to the rights of the claimants as well as the trustee. They are also willing that the other parties in interest in said action appear in this suit and that all matters involved therein be here determined.

17. Your orators, Knauth, Nachod & Kuhne, are not as yet able to specify all the deposits that were made with brokers and others by the bankrupts, Knight, Yancey & Company, out of the money of Knauth, Nachod & Kuhne and the bank and other credits constituting the trust fund held for their benefit by said bankrupts; but annexed hereto is Schedule 15, which exhibits some of the deposits thus made. Knauth, Nachod & Kuhne are not able as yet to specify all the so-called deposits with brokers and others, which were returned to the said bankrupts and reunited with the bank credits constituting the principal part of said trust fund held by them for the benefit of Knauth, Nachod & Kuhne; but annexed hereto is Schedule 16 which exhibits some of the deposits or credits thus returned. Annexed hereto and marked Schedules 17, 18, 19, 20 and 21 are a list of money, bank credits, broker's credits and other credits collected by the receivers; a list of cotton sold by the receivers; a list
89 of pledged cotton the equity in which was received by the receivers; a list of money, bank credits, broker's credits and other credits collected by the trustee; and a list of receipts by the trustee for or on account of other cotton. The assets thus received by the trustee represent, in whole or in part, certain credits created or certain cotton paid for out of the said money of Knauth, Nachod & Kuhne and the said trust fund held for their benefit. Out of the proceeds of the cotton specified in Schedule 16 the receivers paid the $6,714.82 imposed as a condition of the sequestration of the cotton mentioned in Schedule 5. Part of the cotton thus sold by the receivers and the proceeds of which were thus paid as a condition of sequestration, had been paid for by Knight, Yancey & Company out of the money of Knauth, Nachod & Kuhne.

18. On or about the 14th day of April, 1910, the above named defendants Latham, under their co-partnership name of Latham & Company, obtained from the said Knight, Yancey & Company, bills of lading and shipments of the 7,882 or more bales of cotton mentioned and described in the said bill of complaint and in Schedules 5, 6 and 7 hereto annexed. At the time this suit was instituted said

Latham & Company were engaged in transporting or about to transport the same from Mobile and Pensacola to Havre, France, or other European ports. Said bills of lading and the cotton or property represented thereby were obtained by said Latham & Company on account of an antecedent indebtedness, owing to them by said Knight, Yancey & Company, and without any new or other consideration therefor. At the time said Latham & Company received said bills of lading and the cotton and property represented thereby, the said Knight, Yancey & Company were insolvent and knew that they were insolvent and intended, by the delivery of said bills of lading and the property represented thereby, to give to said Latham & Company a preference over other creditors of the same class, contrary to the provisions and form of the bankruptcy act or acts of the United States in such cases made and provided. At the time said Latham & Company received said bills of lading and the cotton or property represented thereby and undertook to transport the same to Havre, France, or other European ports, they knew or at least had reasonable and probable cause to believe and did in fact believe that
90 the said Knight, Yancey & Company were insolvent and were delivering to them the said bills of lading and cotton or property represented thereby with the intent of giving to them, the said Latham & Company, a preference over other creditors of the same class. The said delivery of said bills of lading and of the cotton or property represented thereby, amounted to and was a transfer (so far as the said Knight, Yancey & Company had the power to make a transfer) within the provisions of the bankruptcy act or acts of the United States and was made within four months immediately preceding the adjudication of bankruptcy of said Knight, Yancey & Company. No further credit was thereafter given by said Latham & Company to said Knight, Yancey & Company, in good faith or otherwise, either with or without security, after the said attempted transfer. Said attempted transfer was void as against the trustee and creditors of Knight, Yancey & Company; but your orators, Knauth, Nachod & Kuhne, have rights and equities that are prior and paramount to the rights of either the said trustee or Latham & Company; and, as against your orators, Knauth, Nachod & Kuhne, said attempted transfer was void and of no effect, regardless of whether it was void or voidable as against said trustee.

19. At the time the bankrupts, Knight, Yancey & Company, made the attempted transfer of the bills of lading and of the 7,800 or more bales of cotton represented thereby to Latham & Company, as aforesaid, said cotton being mentioned in Schedules 5, 6 and 7 hereto annexed and continuously until their adjudication of bankruptcy (April 20, 1910), and the present time, the said bankrupts were and have been insolvent and made the said transfer or attempted transfer for the purpose of hindering, delaying and defrauding their creditors and to conceal said cotton or property from their trustee and from the rightful owners thereof, including Knauth, Nachod & Kuhne.

20. The receivers and the trustee in bankruptcy of Knight, Yancey & Company, so far as your orators, Knauth, Nachod & Kuhne,

are concerned, stand in the place of and have no other or greater rights in the bankrupt estate than their bankrupts, Knight,
91 Yancey & Company, and are charged with the same duties and responsibilities in respect thereto, including the duty to account for the $98,005.58, the money of Knauth, Nachod & Kuhne, and for the bank and other credits constituting the trust fund representing said money which was held for their benefit as aforesaid. Your orators, Knauth, Nachod & Kuhne, requested of the said trustee certain information which was necessary and convenient to enable them to trace their money and the bank and other credits, constituting the trust fund held for their benefit, through a number of ramifications, into the various items of account and property received by said trustee. A statement of the requested information was promised by said trustee but was never furnished. Finally the said trustee, after the demand for a statement of the requested information had been renewed, made application to the United States District Court for the Northern District of Alabama for instructions as to the furnishing of the requested information. Your orators, Knauth, Nachod & Kuhne, appeared and answered the trustee's petition and asked that the trustee be ordered to furnish a statement of the requested information. Knauth, Nachod & Kuhne had offered to pay the expense, if any, of having a statement of the requested information prepared. The objection finally made on behalf of the trustee to furnishing the requested information, was that Knauth, Nachod & Kuhne claimed an interest in the bankrupt estate that was prior and paramount to the claims of general or unsecured creditors and was therefore not a party in interest but an adverse claimant. An objection which your orators submit was utterly untenable and inconsistent with the office of a trustee. During the argument of said application an arrangement was agreed upon by which the trustee, although not furnishing the requested information would give Knauth, Nachod & Kuhne's representative access to the books and papers of the bankrupts and of the receivers and trustee. The application was therefore never decided. The trustee had in his employ the bookkeeper formerly employed by the bankrupts and could have furnished the requested information quickly, definitely, accurately, completely, and at little or no extra expense. Knauth, Nachod & Kuhne have ascertained the facts as best they could. The Schedules hereto annexed are made a part hereof but they are not exclusive and your orators, Knauth, Nachod & Kuhne, will ask leave
92 to follow their money into any assets that may have come into the hands of the receivers or trustee. They also submit that any assets in the hands of the trustee should be applied to the reimbursement of their $98,005.58, first of all, whether their money be traced into the same or not.

21. Your orators, Knauth, Nachod & Kuhne, the cross-complainants above named, submit themselves to the jurisdiction of the court and are ready and willing to do equity and to abide by the orders, judgments and decrees of the court. The assets of the bankrupts amount approximately to only $1,439,028.05 while their liabilities amount approximately to $5,090,173.84; and your orators, Knauth, Nachod & Kuhne, have no adequate remedy at law.

To the end therefore that your orators, the above named cross-complainants, the said Knauth, Nachod and Kuhne, may have that relief which they can only obtain in a court of equity and that the defendants above named may answer the premises (but not upon oath or affirmation, an answer upon oath being hereby expressly waived by your orators), they now pray the court:

1. That this bill be heard and determined as an amended cross-bill together and in conjunction with the bill of complaint as amended in said suit by Clarence E. Frost and William S. Lovell as receivers and Joe T. Gibson as creditor of the estate of Knight, Yancey & Company and the supplemental bill of complaint by William S. Lovell as trustee in bankruptcy of Knight, Yancey & Company, both against Latham & Company and others, the said suit being known as No. 279 in this court.

2. That the defendants John W. Knight, William J. Yancey, William D. Nesbitt and Robert H. Nesbitt, composing the firm of Knight, Yancey & Company, be declared, adjudged and decreed to have received the said sum of ninety-eight thousand and five dollars and fifty-eight cents ($98,005.58) of your orators, the said Knauth, Nachod & Kuhne, during the period between the 5th and 18th days of April, 1910, or at about that time and to have held the same as the money and property of your orators, Knauth, Nachod & Kuhne.

93 3. That the defendants John W. Knight, William J. Yancey, William D. Nesbitt and Robert H. Nesbitt, composing the firm of Knight, Yancey & Company, and the defendants Clarence E. Frost and William S. Lovell, as receivers in bankruptcy of the estate of Knight, Yancey & Company, (so far, if at all, as they have not been succeeded by the trustee), and the defendant William S. Lovell, as trustee in bankruptcy of the estate of Knight, Yancey & Company, render an account for the said sum of $98,005.58 and set forth a full, true and particular account of all and singular the cotton or other property purchased, either in whole or in part, with said money or any part thereof; said account to set forth the marks of the cotton and a description of any other property purchased with said money, or any part thereof; said account to set forth also what has become of said cotton, or other property, and the persons, firms, or corporations into whose hands or under whose control the same has come; said account to set forth also whether any such cotton or other property or the proceeds thereof has come into the hands or under the control of the said receivers or trustee and, if so, what disposition has been made thereof; said account to set forth also the quantity and value of said cotton or other property coming into the hands or under the control of said receivers or trustee and whether any claims have been made against the same and, if so, what claims and the disposition made thereof; said account to set forth also whether any and, if so, what part of such cotton or other property or the proceeds thereof is now in the hands of or under the control of said bankrupts or said receivers or trustee or other parties known to them; said account to be accompanied also with a statement of all cotton coming into the hands of said receivers or trustee, setting

forth in detail the number of bales, marks, place where received and disposition thereof.

4. That the transfer, or any attempted transfer, by said Knight, Yancey & Company to the said Latham & Company of the cotton mentioned in the bill of complaint in suit and in Schedules 5, 6 and 7 hereto annexed, or any other property purchased, either in whole or in part, with the money or with the proceeds of the money of your orators, Knauth, Nachod & Kuhne, be adjudged invalid and void and of no effect, as against your orators, Knauth, Nachod & Kuhne.

94 5. That the defendants John W. Knight, William J. Yancey, William D. Nesbitt and Robert H. Nesbitt, composing the firm of Knight, Yancey & Company, and the defendants Clarence E. Frost and William S. Lovell as receivers in bankruptcy of the estate of Knight, Yancey & Company, and the defendant William S. Lovell as trustee in bankruptcy of the estate of Knight, Yancey & Company, be decreed to have held said money and the proceeds thereof, and any credits, bonds, property or rights, into which the same or any part thereof may have been converted or which may have been substituted therefor, in trust for the use and benefit of your orators, Knauth, Nachod & Kuhne; that your orators Knauth, Nachod & Kuhne, be subrogated to any right, title and interest which the said receivers or trustees may have in any and all cotton or credits or bonds or other property or rights into which the said money or any part thereof may have been converted or which may have been substituted therefor; that your orators, Knauth, Nachod & Kuhne be subrogated to any rights which the said receivers or trustee or the said complainant Joe T. Gibson or any one else may have under the said bonds of Latham & Company and the American Surety Company mentioned in the annexed Schedules 5 and 6, and also under the said bond of Th. Ruhne and Isidore Newman & Son, mentioned in Schedule 11; that all said money and cotton and rights, including the said bonds and any other bonds that may have been furnished, be impressed with a lien and with a trust for the benefit of your orators, Knauth, Nachod & Kuhne, to the amount of $98,005.58 and interest thereon at 8 per cent. per annum, the legal rate in Alabama, from the 18th day of April, 1910; and that the court enforce the execution of said trust by decreeing the payment of said sum by the said Latham & Company and American Surety Company, on account of said bond, and by the said receivers and trustee, out of property in their hands, to your orators, Knauth, Nachod & Kuhne, payment by etiher to be sufficient and the amount or balance of said bonds, not paid to your orators, to be paid to the said trustee.

6. That your orators, Knauth, Nachod & Kuhne have such other, further and different relief as justice, equity and the nature of the circumstance of the case may require.

95 7. That it may please your honors to grant to your orators, Knauth, Nachod & Kuhne, a writ of subpœna to be directed to the said Edmond Latham, Charles Latham, Raoul Latham, American Surety Company of New York, Clarence E. Frost and William S. Lovell as receivers in bankruptcy of the estate of Knight, Yancey

& Company, John W. Knight, William J. Yancey, William D. Nesbitt, Robert H. Nesbitt, and William S. Lovell as trustee in bankruptcy of the estate of Knight, Yancey & Company, thereby commanding them and each of them at a certain time and under certain penalty, to be therein set forth, to appear before this honorable court and then and there full, true, direct and perfect answer make to all and singular the premises, and to stand, perform and abide by such order, direction and decree as shall seem meet and agreeable to equity and be made against them or any of them in the premises; and, in case the marshal make return that any of said defendants are not to be found within the jurisdiction where such subpœna can be served, that an order or decree be made and entered directing that service thereof be made upon the solicitors of such defendants as have appeared in this suit and by publication, in a manner to be prescribed according to law, upon any others; or directing that service be made in such other manner as the court shall direct.

8. That the writs, orders and other process issued on your orators' original cross-bill be deemed to have been issued on this amended cross-bill; that all parties who have appeared or been otherwise subjected to the jurisdiction of the court pursuant to the prayer of the original cross-bill be held subject to said jurisdiction under this amended cross-bill; and that an order be granted directing all the defendants above named to answer this amended cross-bill within a time fixed in the order.

9. That an order be entered discontinuing this cross-suit as to the Louisville & Nashville Railroad Company.

And your orators, Knauth, Nachod & Kuhne will ever pray.

KNAUTH, NACHOD & KUHNE,
Complainants.

STEVENS & LYONS,
Solicitors and Counsel for Complainants,
503 City Bank Building, Mobile, Alabama.
BRIESEN & KNAUTH,
Of Counsel for Complainants,
25 Broad St., New York, N. Y.

96 STATE OF NEW YORK,
County of New York:

Arend H. Weingardt, being duly sworn, says: That he is a member of the firm of Knauth, Nachod & Kuhne and signed the foregoing amended cross-bill in the name of his said firm; that the complainants are co-partners pleading together, and that he is authorized to make and does make this verification on behalf of his copartners, as well as on behalf of himself; that he has read the foregoing amended cross-bill and knows the contents thereof; and that the same is true to his own knowledge, except as to the matters therein stated to be alleged on information and belief and that as to those matters, he believes it to be true.

AREND H. WEINGARDT.

Sworn to before me this 16th day of December, 1910.

[L. S.] FRANK F. KIRKPATRICK,
Notary Public, New York County.

SCHEDULE 1.

Cotton received by Knight, Yancey & Co., (during the period from the 5th to the 18th day of April, 1910, or at about that time), and paid for out of moneys belonging to, and bank credits that were subject to a charge in favor of Knauth, Nachod & Kuhne:

Bales.	Marks.
100	QURO
15	PNCE
15	PNFT or PWIT or PWTT
15	PCON
15	QURR
15	QLLE
15	QTOF
15	QEUS or QEOS
15	QRDQ or QRDA
15	QSEI
100	QUKE
100	PION
97 100	PMMT
186	TTT
73	ARA
25	DDD
47	YGH
117	NEH or NEL
111	XCX
63	FKC
11	KID
100	RULE
100	PLAT
100	QABO
100	RACK
100	QACT
100	ROAT
100	RSLX
100	ROCE
100	RIDT or RFDT
100	PITY or PETY
100	PETV
100	POLE (Mobile)
22	PUSS
34	OMEG
28	FROM
68	VBSO
26	TVAV
85	JDNA
27	TOLB
44	SWST
24	TSUN

54	PLAT
81	OATS
59	FUME
100	QSGZ
100	RLNI
100	QSNO
100	RSGA
100	PSPI
100	QEES
100	PDRE
100	QSRO
98 50	RSVI
27	TSGE
46	QFEC
50	REKO
15	QFID
25	RQWX or ROWX or RAWX
15	QIFA
100	QPPD
100	QILM or QELM
100	QALE
100	QYDI
100	QICK or QECK
100	QSGQ
58	PORK
118	OWNS
145	FERD
15	QFRO
15	QBIT
15	QMAR or OMAR
200	QSRE
100	QSDI
100	PSDY
100	QSEH or QSEL
100	PSEX (Mobile)
100	QSYT
100	PSCA
100	QSON
100	PSPL
100	QSOH
100	STLO
100	QSME
150	RSHO
100	RSCO
100	RSET
100	QSIN or QSEN
100	PSEA
100	PSSE
100	RSTO or RSIO
150	QSOP
100	RSNZ

	100	RSKK or RSUK or RSNK
99	100	STPV
	23	PALS
	63	ONLY
	75	FRAM
	100	APD
	50	YPZ
	75	TSGE
	100	PSDA
	100	RASS
	100	RPSS
	100	RSVV
	100	RSTP
	49	TPDO
	100	TSPG
	100	TSCI
	100	TSIC
	25	PLIA
	25	POMP
	25	QEAU
	75	QHYO
	25	QEST
	25	QTRE
	25	RHER
	150	RSES
	100	RSNS
	50	PSAT
	100	PSGI
	25	RLFO
	50	OSBA
	70	OSCO
	25	OSCP
	25	ROSE
	100	RLON
	100	RSBV
	100	SDON or SPON or SOOM
	100	TSCZ
	100	OSYA
	100	OSLE
	50	OSSC
	25	OSLA
	50	OSEA
100	30	RSUL
	50	RSSS
	50	RSIL or RSEL
	100	OSNS
	200	FAT
	100	AIP
	80	RSUG
	40	RSTH
	80	RSHT

	40	SSZS or SSDS
	80	SSAR
	80	SSOL
	14	YOUR
	39	NEAL
	15	GRIN
	25	NITS
	10	GATE
	64	POLE (T. & W.)
	90	OWLL
	97	FROG
	9	PILL
	46	OURY
	57	FUSE
	14	NORA
	12	GARL
	4	XPZY
	13	TJLX
	9	LDID
	10	YULE
	33	NOPE
	50	NELL
	6	GIRL
	3	YEWS
	45	NIGG
	18	GUMS
	140	PXIR
	297	AVVY
	93	ISIS
	8	UTPO
	137	CARD
	73	NONA
101	22	PAID
	5	MONK
	225	SJAM
	57	UXLT
	155	LVBO
	114	WJUS
	40	ISOM
	3	ATIC
	64	CREW
	40	SONY or SONV
	25	BOOF
	2	POWS
	3	YONY
	45	NOSE
	11	GVIT
	31	TJQR
	29	FSLY
	5	NTOC
	6	COWS

8	SUSY
10	WARM
48	RZBR
13,403	

SCHEDULE 2.

Cotton received by Knight, Yancey & Co., and stored at the Gulf Compress, Decatur, or elsewhere, (during the period from the 5th to the 18th day of April, 1910, or at about that time), and paid for to the parties named or others, out of moneys that belonged to and bank credits that were subject to a charge in favor of Knauth, Nachod & Kuhne:

Bales.		
108	Shipped from Huntsville to Decatur.....	$8,342.21
3	Cartwright & Co. at or shipped to Decatur..	254.95
31	Cartwright & Co. at or shipped to Decatur..	2,095.10
4	J. S. Kelly, shipped to Decatur (on ac't)...	125.86
102		
73	A. G. Henry & Co., shipped to Decatur....	4,846.96
37	J. E. Butler & Co., shipped to Decatur.....	2,675.21
1	R. N. Cartwright & Co., at or shipped to Decatur	76.10
2	R. N. Cartwright & Co., at or shipped to Decatur	138.80
2	J. T. Jones, shipped to Decatur.....	119.52
6	A. G. Henry & Co., shipped to Decatur....	153.86
	C. H. Broadway & Co., shipped to Decatur..	76.02
2	Cloude, King & Co., shipped to Decatur....	152.22
1	Mrs. J. D. Wykes, shipped to Decatur.....	56.00
8	F. H. Lightfoot, shipped to Decatur.....	658.15
5	J. P. Gibson, shipped to Decatur.....	396.97
100	F. H. Lightfoot, shipped to Decatur.....	7,682.40
100	F. H. Lightfoot, shipped to Decatur.....	7,596.30
12	Stephenson & Alexander.....	918.24
183	Shipped from Huntsville to Decatur.....	12,591.70
1	J. T. Jones, at or shipped to Decatur.....	78.05
100	F. H. Lightfoot, shipped to Decatur.....	7,759.15
16	J. D. Snodgrass, shipped to Decatur.....	1,142.93
644	F. H. Lightfoot, shipped to Decatur.....	49,073.68
2	J. T. Jones, shipped to Decatur.....	139.50
100	F. H. Lightfoot, shipped to Decatur.....	7,731.22
15	Claude King & Co., shipped to Decatur....	1,104.54
2	E. K. Clinn & Co., shipped to Decatur.....	466.46
50	F. H. Lightfoot, shipped to Decatur.....	3,846.47
1	R. N. Cartwright, shipped to Decatur.....	80.90
1,609		$120,379.47

SCHEDULE 3.

Moneys or bank credits paid to the parties named or others, on account of cotton received by Knight, Yancey & Co., and stored at the Gulf Compress, Decatur, or elsewhere, (during the period from the 5th to the 18th day of April, 1910, or at about that time), which moneys or bank credits were subject to a charge in favor of Knauth, Nachod & Kuhne:

	A. Polytinsky (on account)	$475.36
103	Thompson & Wallace (on account)	4,010.00
	Huntsville Bank & Trust Co. (bills payable)	30,685.64
	T. H. Jones & Co	819.00
	Cotton Commission Company	2,484.90
	E. C. Snodgrass (on account)	2,730.02
	E. T. Robertson & Son (on account)	216.20
		$41,451.12

SCHEDULE 4.

Cotton withdrawn from the Gulf Compress, Decatur, or elsewhere, by Knight, Yancey & Co. (during the period from the 5th to the 18th day of April, 1910), which cotton was subject to a charge in favor of Knauth, Nachod & Kuhne:

Bales.	Marks.
20	PLEN
15	RNSG
24	REMI
20	RNOU or RNON
100	TSXS
150	QSMP
25	RSSB
15	QARI
100	TSST
150	PSSI
15	PINS
15	PNRX or PURX
15	QFAB
100	QHEP
100	RETM
100	TSAG
100	PSEX (D. to N. O.)
200	PIN
100	QSGA
100	RSON
100	RSIE
100	QNET
104 100	RUDE

100	RWED
100	QSEB
100	RSEI or RSEL
25	RWIN
25	RGSE
25	RIBE
25	RLSM
25	RANA
100	RTYA
100	SNDM
100	RNOE
150	RSLE
2,639	

SCHEDULE 5.

Cotton claimed by Latham & Company that was sequestrated by the United States Circuit Court for the Southern District of Alabama in this suit and for which a bond was given in the sum of $325,000.00; a part of which cotton is among the bales mentioned or referred to in Schedules 1, 2, 3 and 4; and the bond for which cotton, as well as the proceeds thereof, is subject to a charge in favor of Knauth, Nachod & Kuhne:

	Bales.	Marks.
	100	Q S U S
	100	Q S A N
	100	Q S D C
	100	R S L I or R S T I
	100	R S I A
	100	R S O T
	100	R S N I
	100	R S E R
	100	P S I Z
	100	P S O L
	100	P S D Y
105	100	P S O G
	100	P S E X
	100	P S S E
	100	P S C A
	100	P S P L
	100	Q S G Q
	100	Q S X T
	100	Q S E L
	100	R S N U
	100	R S L X
	100	Q S Y T
	100	P S E V
	100	P S E N
	100	P S G E

100	P S O A or P S D A
100	P S T W
100	P S R I
100	P S B A
100	P S O P
100	P S F A
100	P S K O
100	Q S O T
100	Q S H O
100	P S E A
100	P S D A or P S O A
100	Q S D W
100	Q S A D
100	Q S M E
100	Q S O H
100	Q S O N
100	R S E N
100	R S X A
4,300	

(For other cotton claimed by Latham & Company see Schedules 6 and 7.)

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SCHEDULE 6.

Cotton delivered to the trustee and by him delivered to Latham & Company (pursuant to an order of the United States District Court for the Northern District of Florida, dated July 2, 1910), upon the giving of a bond in the sum of $240,000.00; some of which cotton is among the cotton mentioned or referred to in Schedules 1, 2, 3 and 4 and was subject, as are the bond and the proceeds thereof, to a charge in favor of Knauth, Nachod & Kuhne:

Bales.	New marks.	Old marks.		Shipper or place of shipment by Knight, Yancey & Co.
100	QFEC	46	QFEC	Knight, Yancey & Co., Selma.
		25	JAP	F. F. Jonstone & Co.
		4	JIL	Do.
		25	JOY	Do.
100	QIFA	15	QIFA	Selma
		39	OWFW	Sellers & Orman
		42	OJXW	Do.
		4	EUHW	Do.
100	REKO	50	REKO	Selma
		25	RUTT	C. Gunter Elmore
		25	RINO	Do.
100	QSGA	100	QSGA	Decatur

100	RLFO	25	RLFO	Selma
		25	SAD	F. F. Johnstone & Co.
		25	SKY	Do.
		25	SOX	Do.
100	RNOU	20	RNOU	Decatur
		7	AID	F. F. Johnstone & Co.
		25	SUE	Do.
		25	SEW	Do.
		23	SIQ	Do.
107				
100	RUSG	15	RUSG	Decatur
		25	SODJ	C. Gunter Elmore
		29	SICW	Do.
		16	PLB	F. F. Johnstone & Co.
		15	AXKW	Roman Warehouse
100	REMI	24	REMI	Decatur
		76	ECPW	Sellers & Orman
100	PLEN	20	PLEN	Decatur
		65	PZPO	Thompson & Wallace
		15	VIC	F. F. Johnstone & Co.
100	QARI	15	QARI	Decatur
		49	KYC	F. H. Lightfoot
		36	OSKA	Thompson & Wallace
100	QFAB	15	QFAB	Decatur
		8	OSKA	Thompson & Wallace
		77	KYC	F. H. Lightfoot
100	PURX	15	PURX	Decatur
		44	PZPO	Thompson & Wallace
		41	KYC	F. H. Lightfoot
100	PINS	15	PINS	Decatur
		45	PZPO	Thompson & Wallace
		40	KYC	F. H. Lightfoot
100	RSON	100	RSON	Decatur
50	RSRE	37	FOSS	Thompson & Wallace
		13	KYC	
100	RSAT	25	OWL	Thompson & Wallace
		37	FRAM	Do.
		6	TVAV	Do.
		7	QLAS	Do.
		25	AGRD	Do.

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100	QSTR	40	KYC	F. H. Lightfoot
		16	TDNA	Thompson & Wallace
		7	OAKS	Do.
		37	KYC	F. H. Lightfoot
100	QSGC	40	KYC	F. H. Lightfoot
		3	TOLB	Thompson & Wallace
		2	TOYS	Do.
		3	OWLL	Do.
		36	OSSO	Do.
		11	FOSS	Do.
		3	KYC	F. H. Lightfoot
100	RSIC	15	OTTO	Thompson & Wallace
		3	JDNA	Do.
		2	TOLB	Do.
		4	TVAV	Do.
		44	CAKS or OAKS	Do.
		32	OWNS	
100	QSLL	42	KYC	F. H. Lightfoot
		25	PWG	F. F. Johnstone & Co.
		18	PVP	
		7	JDNA	Thompson & Wallace
		3	OWLL	Do.
		5	OLAS	Do.
100	RSOM	80	KYC	F. H. Lightfoot
		20	JDNA	Thompson & Wallace
100	QNCE or ONCE	65	KYC	F. H. Lightfoot
		15	OWFW	Sellers & Orman
		20	OLAS	Thompson & Wallace
100	QSAT (B) or OSAT (B)	6	TOLB	Do.
		12	SWST	Do.
		63	OWNS	Do.
		19	KYC	F. H. Lightfoot

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100	PHAL or PWAL	66	VBSO	Thompson & Wallace
		14	PROS	Do.
		20	KYC	F. H. Lightfoot

100	QSUR or OSUR	13	ONLY	Thompson & Wallace
		14	OWLL	Do.
		10	FOSS	Do.
		63	KYC	F. H. Lightfoot
100	RSBL	4	FRAM	Thompson & Wallace
		23	ONLY	Do.
		40	FROG	Do.
		33	KYC	F. H. Lightfoot
20	PZLU	8	POST	Thompson & Wallace
		12	POLE	Do.
25	QSAT	25	ONLY	Thompson & Wallace
20	PSHE	20	KYC	F. H. Lightfoot
20	PRIK	4	POLE	Thompson & Wallace
		7	PINT	Do.
		9	KYC	
2,635				

SCHEDULE 7.

Cotton claimed by Latham & Company, which was delivered to the trustee (pursuant to an order of the United States District Court for the Northern District of Florida, dated July 8, 1910), and sold, and the proceeds (after payment of freight and other charges both on this cotton and the cotton mentioned in Schedule 6) of which are now held by the trustee until the rights of all parties interested therein can be determined; some of which cotton is among the cotton mentioned or referred to in Schedules 1, 2, 3 and 4, and was
110 subject, as are the proceeds thereof, to a charge in favor of Knauth, Nachod & Kuhne:

Bales.	New marks.	Old marks.		Shipper or place of shipment by Knight, Yancey & Co.
100	RSMX or RSMI	14	FERD	Thompson & Wallace
		58	FRAT	Do.
		28	FROM	Do.
100	RSCO	66	TOLB or FOLB	Thompson & Wallace
		34	OMEG	Do.
100	RSPZ or RSTZ	22	JDNA	Do.
		5	POLE	Do.
		49	TPDO	Do.
		24	TSUN	Do.

100	RSCE	13	JDNA	Do.
		87	FERD	Do.
100	QSIY or OSIY	2	ONLY	Do.
		52	OAKS	Do.
		15	OPRA	Do.
		31	OWLL	Do.
100	RSEA	1	TVAV	Do.
		3	SWST	Do.
		2	YBSO or VBSO	Do.
		16	FRAM	Do.
		11	POST	Do.
		33	PORK	Do.
		20	PROS	Do.
		5	TOLB or FOLB	Do.
		9	KYC	F. H. Lightfoot
23	PALS	23	PALS	Thompson & Wallace
111				
50	POST or PSOT	50	POST	Do.
40	PINT or PENT	40	PINT	Do.
15	OPRA	15	OPRA	Do.
2	KYC	2	KYC	F. H. Lightfoot
29	XX	29	XX	Parker Mer. Co.
57	FUSE	57	FUSE	Thompson & Wallace
9	PILL	9	PILL	Do.
81	OATS	81	OATS	Do.
59	Fume or FUNE or FOME	59	FUME or FUNE or FOME	Do.
965				

SCHEDULE 8.

Cotton at Pensacola claimed by Westphalen & Company (through Scheuch & Company), the proceeds of which have been received by the trustee (except the 100 bales marked QHYO or GHYO, replevied by the Peoples Bank & Trust Company of Selma, Alabama); some of which cotton is among the cotton mentioned in Schedules 1, 2, 3, and 4, and is subject to a charge in favor of Knauth, Nachod & Kuhne:

Bales.	Marks.	Original marks.		Shipper or place of shipment.
100	QLEF	50	QLEF	Knight, Yancey & Co., Selma.
		50	QLEF	Thompson & Wallace
112				
50	PBRA	12	PBRA	Knight, Yancey & Co., Selma.
		38	PBR	Thompson & Wallace
100	PINC	63	PINC	Knight, Yancey & Co., Selma.
		37	PINC	Thompson & Wallace
100	QTRI	25	QTRI	Knight, Yancey & Co., Selma.
		75	OTRI or QTRI	Thompson & Wallace
100	QEST or QUST	25	QEST	Knight, Yancey & Co., Selma.
		75	QEST	Thompson & Wallace
100	QEAU	25	QEAU	Knight, Yancey & Co., Selma.
		75	QEAU	Thompson & Wallace
100	PNCE	15	PNCE	Knight, Yancey & Co., Selma.
		85	PNCE	Do. Mobile.
100	PWIT or PNFT or PWTT	15	PWIT, etc.	Do. Selma.
		85	PWIT	Do. Mobile.
100	QURR or OURR	15	QURR or OURR	Do. Selma.
		85	QURR or OURR	Do. Mobile.
100	QEQS	15	QEQS	Do. Selma.
		85	QEQS	Do. Mobile.
100	QTOF	15	QTOF	Knight, Yancey & Co., Selma.
		85	QTOF	Do. Mobile.

100	PCON	15	PCON	Knight, Yancey & Co.,	Selma.
		85	PCON	Do.	Mobile.
100	QLLE	15	QLLE	Knight, Yancey & Co.,	Selma.
		85	QLLE	Do.	Mobile.
113					
100	QSEI or QSEZ	15	QSEI or QSEZ	Do.	Selma.
		85	QSEZ or QSEI	Do.	Mobile.
100	QRDA	15	QRDA	Do.	Selma.
		85	QRDA		Mobile.
100	PGFA or PFGA	25	PGFA or PFGA	Knight, Yancey & Co.,	Decatur.
		75	PGFA or PFGA	C. Gunter Elmore	
100	POMP	25	POMP	Knight, Yancey & Co.,	Selma.
		75	POMP	Thompson & Wallace (?)	
100	PLIA	25	PLIA	Knight, Yancey & Co.,	Selma.
		75	PLIA	Thompson & Wallace	
100	QHYO or GHYO	75	QHYO or GHYO	Knight, Yancey & Co.,	Selma.
		25	QHYO or GHYO	Thompson & Wallace	
100	RHER	25	RHER	Knight, Yancey & Co.,	Selma.
		75	RHER	Thompson & Wallace	
1,950					

SCHEDULE 9.

Cotton delivered to the trustee at Pensacola by the Louisville & Nashville Railroad Company, subject to the rights of all parties claiming an interest therein (see contract of July 1, 1910), and sold by the trustee; some of which cotton is among the cotton mentioned or referred to in Schedules 1, 2, 3 and 4 and was subject, as are the proceeds thereof, to a charge in favor of Knauth, Nachod & Kuhne:

75	QSOW	8	QSOW	Thompson & Wallace
		5	TVAV	Do.
		19	FRAM	Do.
		7	TOYS	Do.
		36	KYC	F. H. Lightfoot

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80	QSRT	40	KYC	Do.
		6	FRAM	Thompson & Wallace
		19	FERB	Do.
		15	FOSS	Do.
40	RSFL or QSZL	40	KYC	Do.
50	RSRE	12	OWNS	Thompson & Wallace
		38	KYC	F. H. Lightfoot
50	SSTH	50	KYC	F. H. Lightfoot
75	RSIN	75	KYC	Do.
100	RSLW	10	TVAV	Thompson & Wallace
		3	TOLB	Do.
		7	SWST	Do.
		5	FRAM	Do.
		2	TOYS	Do.
		24	KYC	F. H. Lightfoot
		14	FLOY	Thompson & Wallace
		35	FROG	
80	RSLB	80	OTTO	Thompson & Wallace
75	RSUI	75	KYC	F. H. Lightfoot
80	PSHE	80	KYC	Do.
24	RSBO	24	AMGS	Weil Brothers
50	RSTE	16	RSAL or RSAZ	Peoples W. H. Co.
		20	RSAL or RSAZ	Weil Brothers
		14	RSAL or RSAZ	Wm. Cunningham
115				
75	OSAT or QSAT	27	RJON	Thompson & Wallace
		48	KYC	F. H. Lightfoot
75	QSTJ or RSTJ	75	KYC	Do.
80	PRIK	80	KYC	F. H. Lightfoot

40	QSZL	4	JDNA	Thompson & Wallace
		11	OWNS	Do.
		25	KYC	F. H. Lightfoot
75	RSMI	75	KYC	F. H. Lightfoot
70	PZLU	70	KYC	F. H. Lightfoot
25	PORK	25	PORK	Thompson & Wallace
43	POLE	43	POLE	Do.
22	PUSS	22	PUSS	Do.
1	KYC	1	KYC	F. H. Lightfoot
23	XX	23	XX	Parker Mer. Co.
190	KYC	190	KYC	Hurdle Brothers
46	OURY	46	OURY	Thompson & Wallace
54	PLAT	54	PLAT	Thompson & Wallace
80	RSUG			Knight, Yancey & Co., Mobile
80	RSHT			Do.
80	SSAR			Do.
40	SSZS			Do.
40	RSTH			Do.
80	SSOL			Do.
1,998				

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SCHEDULE 10.

Additional cotton received by the trustee from the L. & N. R. R. Co. at Pensacola, except as indicated; which cotton is among the cotton mentioned or referred to in Schedules 1, 2, 3 and 4 and is subject as is the proceeds thereof (or the equity therein, if the banks' liens be prior) to a charge in favor of Knauth, Nachod & Kuhne:

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Bales.	Marks.	Old marks.		Shipper or place of shipment.
6	OMAR			Knight, Yancey & Co., Selma.
100	QZID or QSID	15	QZID or QSID	Knight, Yancey & Co., Selma.
		85	AXKW	Roman Cotton Co.
		(100 B C, QZID, were delivered to the Peoples Bank & Trust Co., Selma, pursuant to an order of the U. S. District Court, at Pensacola, dated June 27, 1910.)		
100	RAWX or ROWX	25	RAWX or ROWX	Knight, Yancey & Co., Selma.
		25	RFIT	C. Gunter Elmore
		25	RWOJ	C. Gunter Elmore
		25	RXCZ	C. Gunter Elmore
		(100 B. C. RAWX, were delivered to the City National Bank, Selma, also pursuant to the said order.)		
100	QBIT	15	QBIT	Knight, Yancey & Co., Selma.
		85	QBIT	C. Gunter Elmore

SCHEDULE 11.

Cotton released pursuant to an order or decree of the United States District Court for the Eastern District of Louisiana, upon the furnishing of a bond in the sum of $98,500; upon which bond the trustee is prosecuting an action at law in the United States
117 Circuit Court for the Eastern District of Louisiana; and which cotton is included among the cotton mentioned as referred to in Schedules 1, 2, 3 and 4 and was subject, as is also the bond in lieu of it and the proceeds thereof to a charge in favor of Knauth, Nachod & Kuhne:

Bales.	Marks.
100	TSAG
100	PSEX
100	TSST
100	TSXS
100	QSMP
100	QNET
100	TSSL
100	PSSI
150	TSCZ or PSCZ
100	TSIC
100	TSCI
100	TSPG
100	SDOM or SOON
1,350	

SCHEDULE 12.

Cotton shipped to Chalmette, La., but which the trustee appears to have charged against the Planters & Mechanics (or Merchants) Bank, Uniontown, Alabama; which cotton is among the cotton mentioned or referred to in Schedules 1, 2, 3 and 4 and is subject to a charge in favor of Knauth, Nachod & Kuhne:

100	Bales; QSLI; Trustee's book value	$7,000.00
67	Bales; QSNS; Trustee's book value	4,690.00
100	Bales; QSYA; Trustee's book value	7,000.00
		$18,690.00

SCHEDULE 13.

Cotton obtained by trustee from New Orleans Terminal Company or others, pursuant to some arrangement between them and to an order of the United States District Court for the Eastern District of Louisiana (as to 100 B. C., RSSA), dated June 28, 1910, in the proceeding against the Steamship Inglefingen; which cotton is among the bales mentioned or referred to in Schedules 1, 2, 3 and 4 and has been sold by the trustee and the proceeds of which are subject to a charge in favor of Knauth, Nachod & Kuhne:

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33	Bales; QSNS; proceeds of sale	$2,679.95
100	Bales; QSRO; proceeds of sale	7,275.53
100	Bales; RSSA; proceeds of sale	7,489.43
233		$17,444.91

SCHEDULE 14.

The cotton obtained by trustee from the New Orleans Terminal Company pursuant to order of United States District Court, Eastern District of Louisiana, dated June 28, 1910, in the proceedings against the Steamship Inglefingen, the same having been sold and the proceeds received by the trustee; which cotton is among the bales mentioned or referred to in Schedules 1, 2, 3 and 4 and the proceeds thereof are subject to a charge in favor of Knauth, Nachod & Kuhne:

100	Bales; QHEP or OHEP; proceeds of sale	$7,686.03
100	Bales; RETM; proceeds of sale	7,826.37
200		$15,512.40
	Charges deducted by trustee	986.00
		$14,526.40

SCHEDULE 15.

Moneys or bank credits or other property deposited, with the parties named or others, by Knight, Yancey & Co., (during the period

from the 5th to the 18th day of April, 1910), which moneys or bank credits or other property were subject to a charge in favor of Knauth, Nachod & Kuhne:

Moyse & Holmes	$10,000.00
Hayward & Clark	20,000.00
Hayden, Stone & Company	15,000.00
119 E. Moyse & Company	10,000.00
Carpenter, Baggot & Company	2,000.00
Morgan County National Bank	3,000.00
Blum & Hyman	2,500.00
Union Bank & Trust Co., Pulaski, Tenn. (400 B. C.)	30,000.00
First National Bank of Decatur (350 B. C.)	24,500.00
	$117,000.00

SCHEDULE 16.

Money or bank credits deposited by Knight, Yancey & Company (during the period from the 5th to the 18th day of April, 1910, or at about that time, as set forth in Schedule 15), that were returned to them and paid out (except what remained on hand, as set forth in Schedule 17), for the cotton mentioned or referred to in Schedules 1, 2, 3 and 4, or some part thereof; the said money, credits or other property and the cotton paid for therewith and the proceeds of said cotton, all being subject to a charge in favor of Knauth, Nachod & Kuhne:

Hayward & Clark	$46,513.48
Hayden, Stone & Co	33,725.00
E. Moyse & Co	24,000.00
	$104,238.48

SCHEDULE 17.

Money, bank credits, broker's credits, and other credits held by Knight, Yancey & Co., at the time of the adjudication of bankruptcy (April 20, 1910), which came into the hands of the receivers and thence into the hands of the trustee, the same being subject to a charge in favor of Knauth, Nachod & Kuhne:

Cash on hand	$2,145.00
Peoples Bank, Mobile	2,828.97
First National Bank, Mobile	2,205.88
First National Bank, Decatur	2.44
Morgan County National Bank	35.42
City Bank, Selma	5,086.75
Marion Central Bank	500.00
120 Peoples Bank, Selma	188.13
	$12,992.59

Carpenter, Baggot & Co.	$1,337.50	
Blum & Hyman	1,415.00	
Moyse & Holmes	1,959.44	
F. van Gerpen	5,907.53	
		10,619.47
		$23,612.06

SCHEDULE 18.

Cotton held by Knight, Yancey & Co., at the time of the adjudication of bankruptcy (April 20, 1910), which came into the hands of the receivers and was sold by them and the proceeds of which were passed to the trustee; which cotton, or some of it, was among the cotton mentioned or referred to in Schedules 1, 2, 3 and 4; and which proceeds are subject to a charge in favor of Knauth, Nachod & Kuhne:

232 Bales, Decatur	$16,856.70
561 Bales, So. Ry., Decatur	42,685.80
266 Bales, Mobile	19,097.91
Loose, Mobile	711.75
	$79,352.16

SCHEDULE 19.

Cotton held by banks as pledges of Knight, Yancey & Co., at the time of the adjudication of bankruptcy, which was sold by the banks and the proceeds of which, after payment of the amount due the banks, were passed to the receivers and thence to the trustee; which cotton, or some of it, was among the cotton mentioned or referred to in Schedules 1, 2, 3 and 4; and which proceeds, thus passed to the receivers and trustee, are subject to a charge in favor of Knauth, Nachod & Kuhne:

625 Bales, Decatur	$39,506.08
10,203 Bales, Mobile	716,059.37
500 Bales, Fall River (on acct.)	31,600.00
73 Bales, Huntsville	5,324.97
	$792,490.42
Credited by banks	567,052.26
Passed to receivers and trustee	$225,438.16

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SCHEDULE 20.

Money on bank credits, broker's credits and other credits held by Knight, Yancey & Co., at the time of the adjudication of bankruptcy (April 20, 1910), which have come into the hands of the trustee (in addition to what passed through the hands of the receivers as set forth in Schedules 17, 18 and 19), and have been collected by him and which were subject, as are the proceeds thereof to a charge in favor of Knauth, Nachod & Kuhne:

E. Moyse & Co. (per Moyse & Holmes)	$1,653.00
Thompson & Wallace	1,278.36
Union Bank & Trust Co., Pulaski, Tenn., (compromise)	16,703.53
	$19,634.89

SCHEDULE 21.

Additional cotton, credits or property held by Knight, Yancey & Company at the time of the adjudication of bankruptcy (April 20, 1910) which, or the proceeds thereof, have come into the hands of the trustee; which cotton or property, or some part thereof, was among the cotton or property mentioned or referred to in Schedules 1, 2, 3 and 4, and was subject, as are the proceeds thereof, to a charge in favor of Knauth, Nachod & Kuhne:

	Balance on Fall River cotton	$1,964.47
	Balance on New Orleans cotton	413.13
7	Bales, Huntsville	494.62
66	Bales, Selma	3,906.77
10	Bales, Selma	618.95
	Pickings, Selma	4.48
40	Bales, Decatur	2,735.15
111	Bales, Mobile (on acct. of)	82,145.31
45	Bales, Pensacola (on acct. of)	3,000.00
38	Bales, Mobile (on acct. of)	2,245.78
1	Bale, Mobile (short, paid by compress)	70.80
3,902	Bales, Pensacola (on acct. of)	34,516.70
111	Bales, Mobile	1,697.83
4	Bales, Decatur (damaged and rejected)	65.17
		$133,879.16

Filed December 20, 1910, by leave of the court.
RICHARD JONES, *Clerk.*

122 *Motion of Complainant to Amend Original Bill by Striking Out Paragraph 4½, etc.*

In the Circuit Court of the United States for the Southern District of Alabama, Southern Division.

In Equity. No. 279.

CLARENCE E. FROST and WILLIAM S. LOVELL, as Receivers of Knight, Yancey & Company, Bankrupts, and JOE T. GIBSON
vs.
LATHAM & COMPANY et al.

To the Honorable Judges of the United States Circuit Court in and for the Fifth Circuit of the Southern District of Alabama:

Come Clarence E. Frost and William S. Lovell, as receivers of Knight, Yancey & Company, bankrupts, and Joe T. Gibson, and

move the court that they be allowed to amend their original bill in this cause, by striking therefrom the paragraph numbered 4½, reading as follows, to-wit:

"Your orators are informed and believe and upon such information and belief charge that there are persons other than said Latham & Company who claim some right, title or interest in said seventy-eight hundred (7,800) bales of cotton, or portions thereof, and that the names of such other persons, firms or corporations are unknown to these complainants; and that the nature of such right, title or interest claimed in and to said seventy-eight hundred (7,800) bales of cotton is unknown to these complainants."

And by striking therefrom the following portion of the prayer of said bill as follows, to-wit:

"That all firms, persons or corporations who claim any right, title or interest in and to said seventy-eight hundred (7,800) bales of cotton be made parties defendant to this bill and be cited by publication to answer this bill."

Which said portions of said bill sought to be stricken therefrom by amendment were inserted in said bill by the amendment filed May 5th, 1910, and allowed by the court on the same day.

123 Movants show to the court that said portions of said bill, now sought to be stricken, were inserted in said bill because of information which reached complainants to the effect that the cotton, the subject matter of this suit, was claimed by a bank in France, under and by virtue of a transfer from Latham & Company; and, desiring to save the necessity of litigating the same question involved in this suit with such bank, complainants caused said portions of said bill to be inserted therein by way of amendment.

Complainants further show to the court that said portions of said bill have been seized upon by Knauth, Nachod & Kuhne as an excuse for seeking to have themselves made parties to this cause with a view of having litigation in this court not germane to the matters set forth in the original bill.

CLARENCE E. FROST,
WILLIAM S. LOVELL,
As Receivers in Bankruptcy of Knight, Yancey & Company, Bankrupts,
By PERCY, BENNERS & BURR,
Their Attorneys.
JOE T. GIBSON,
By PERCY, BENNERS & BURR,
His Attorneys.
PERCY, BENNERS & BURR,
RICH & HAMILTON,
Attorneys for Complainants.

STATE OF ALABAMA,
Jefferson County:

William S. Lovell being duly sworn deposes and says that he is receiver in bankruptcy of Knight, Yancey & Company, bankrupts,

and is one of the parties to the original bill; and that the averments of the above and foregoing are true; and that the averments of the bill as proposed to be amended are true as therein stated.

WILLIAM S. LOVELL.

Subscribed and sworn to before me, this the 10th day of January, 1911.

DAVID B. ADAMS,
Notary Public.

124 To Messrs. Howe, Fenner, Spencer & Cocke, Solicitors for Latham & Company:

To Messrs. Stephens & Lyons and Messrs. Brieson & Knauth, Solicitors for Knauth, Nachod & Kuhne:

Please take notice that the foregoing motion to amend will be presented to the court, and its allowance asked, on the 21st day of January, 1911.

PERCY, BENNERS & BURR,
RICH & HAMILTON,
Solicitors for Clarence E. Frost and William S. Lovell, as Receivers in Bankruptcy of Knight, Yancey & Company, Bankrupts, and Joe T. Gibson.

Filed Jan'y 21, 1911.

RICHARD JONES, *Clerk.*

Motion of Lovell, Trustee, Complainant, to Strike from the File the Answer of Knauth, Nachod & Kuhne to Bill of Complaint and to Strike from the File the Cross-bill and Amended-Cross-bill of Knauth, Nachod & Kuhne.

In the Circuit Court of the United States for the Southern District of Alabama, Fifth Circuit, Southern Division.

In Equity. No. 279.

WILLIAM S. LOVELL, as Trustee in Bankruptcy of Knight, Yancey & Company, Bankrupts,
vs.
LATHAM & COMPANY et al.

Comes William S. Lovell, as trustee in bankruptcy of Knight, Yancey & Company, bankrupts, who, heretofore, in this cause exhibited his supplemental bill against Latham & Company, and appears specially for the purpose of making this motion, and for no other purpose, and separately moves the court to strike from the
125 file in this cause, the paper purporting to be an answer of Knauth, Nachod & Kuhne to the original bill in this cause, and the paper purporting to be the cross-bill of Knauth, Nachod & Kuhne, exhibited in this cause, and the paper purporting to be the amended cross-bill of Knauth, Nachod & Kuhne, exhibited in this cause, on the following grounds:

First.

That he is a resident of the Northern District of Alabama, and that none of the persons composing the bankrupt partnership of Knight, Yancey & Company reside or resided within the Southern District of Alabama; and that the principal place of business of said Knight, Yancey & Company was not within the Southern District of Alabama; and that no valid personal service of a subpœna to said William S. Lovell, trustee, has been had, or can be had, to answer said cross-bill, either in its original form or as sought to be amended; nor is there now, nor was there at the time said answer and said papers purporting to be a cross-bill filed in this cause, any property, the subject matter of this suit, within the jurisdiction of this court; and that no valid order of publication can be made in this cause requiring the said Lovell, trustee, to answer said cross-bill.

Second.

Because this court is without jurisdiction to hear and determine the matters and things set forth in said cross bill, or petition of intervention, in the absence of voluntary appearance thereto by the said Lovell, trustee; and that the said Lovell, trustee, has not voluntarily appeared to plead to the said cross bill, or petition of intervention.

Third.

Because said answer and said cross-bill, in the original and amended form, are impertinent.

Fourth.

Because said cross-bill in its original and amended form seeks to introduce into this cause, matters that are distinct from, independent of, and have no connection with those shown by said cross-
126 bill to be otherwise involved herein, and which matters so sought to be introduced herein are such as cannot properly be litigated or investigated in this suit, but only in a suit or proceeding separate from and independent of this cause.

Fifth.

Because the matters sought to be introduced into this cause by said cross-bill in its original and amended form, if included in the original bill of complaint filed in this cause would have rendered it subject to demurrer for multifariousness, as joining distinct and disconnected matters in one suit.

Sixth.

Because the right, title or interest of Knauth, Nachod & Kuhne in or to the cotton, or any of the cotton involved in this litigation, cannot be properly investigated or inquired into in this proceeding.

Seventh.

Because by said answer and said cross-bill, or petition of intervention, said Knauth, Nachod & Kuhne seek to split up the cause of action claimed by them, and litigate such claim in part in this suit, and in part in other suits or proceedings.

Eighth.

Because it does not appear from the pleadings in this cause that said Knauth, Nachod & Kuhne were parties by name or reference to the bill in this cause; and it does not appear that the consent of the parties to this cause was obtained to their attempt at an appearance herein.

Ninth.

Because there is no equity in said cross-bill.

PERCY, BENNERS & BURR,
RICH & HAMILTON,
Solicitors for William S. Lovell, Trustee in Bankruptcy of Knight, Yancey & Company, Bankrupts.

We certify that in our opinion the foregoing motion is well taken in point of law.

PERCY, BENNERS & BURR,
Solicitors for William S. Lovell, Trustee in Bankruptcy of Knight, Yancey & Company, Bankrupts.

Filed Jan'y 21, 1911.

RICHARD JONES, *Clerk.*

127 *Appearance of Latham & Company as to Hearing on Motion to Strike Answer of and Cross-bill of Knauth, Nachod & Kuhne.*

In the Circuit Court of the United States for the Southern District of Alabama, Southern Division.

In Equity. No. 279.

CLARENCE E. FROST and WILLIAM S. LOVELL, as Receivers of Knight, Yancey & Company, Bankrupts, and Joe T. Gibson, Complainants,

vs.

LATHAM & COMPANY et al., Respondents.

Come now Latham & Company, defendants in the above entitled and numbered cause, through their undersigned solicitors, and in response to the notice served upon them that on Saturday the 21st

day of January, 1911, there will be a hearing upon the motions of the complainants to amend their original bill in this cause by striking therefrom the paragraph numbered 4½, reading as follows, to-wit:

"Your orators are informed and believe and upon such information and belief charge that there are persons other than said Latham & Company who claim some right, title or interest in said seventy-eight hundred (7800) bales of cotton, or portions thereof, and that the names of such other persons, firms or corporations are unknown to these complainants; and that the nature of such right, title or interest claimed in and to said seventy-eight hundred (7800) bales of cotton is unknown to these complainants."

And by striking therefrom also the following portion of the prayer of the said bill, to-wit:

"That all firms, persons, or corporations who claim any right, title or interest in and to said seventy-eight hundred (7800) bales of cotton be made parties defendant to this bill and be cited by publication to answer this bill."

And to strike from the file in this cause the paper purporting to be an answer of Knauth, Nachod & Kuhne to the original bill in this cause, and the paper purporting to be the cross-bill of Knauth, Nachod & Kuhne exhibited in this cause, and the paper purporting to be the amended cross-bill of Knauth, Nachod & Kuhne
128 exhibited in this cause, copies of which said proposed motions have been furnished to movers:

Respectfully show to the court:

That these appearers have no objection to offer to the allowance by the court of either of the said motions, or to the hearing thereon being had on Saturday the 21st day of January, 1911, or upon any other date to which the court may see fit to adjourn the said hearing.

HOWE, FENNER, SPENCER & COCKE,
Solicitors for Latham & Company.

Filed Jan'y 21, 1911.

RICHARD JONES, *Clerk.*

Opinion of Toulmin, Judge, on the Motion to Strike Cross-bill of Knauth, Nachod & Kuhne.

Circuit Court of the United States for Southern District of Alabama.

In Equity. No. 279.

CLARENCE E. FROST and WILLIAM S. LOVELL, as Receivers of Knight, Yancey & Company, Bankrupts, and Joe T. Gibson, Complainants,

vs.

LATHAM & COMPANY, a Partnership, et al., Respondents.

On Motion to Strike Cross-Bill, as Amended, of Knauth, Nachod & Kuhne.

Percy, Benners & Burr, Rich & Hamilton, for Complainants.
Briesen & Knauth, Stevens & Lyons, for Cross-complainants.

Toulmin, District Judge.

A cross-bill is generally considered as a defence to the original bill, or as a proceeding necessary to a complete determination of a matter already in litigation.

Story's Equity Pldg., Sec. 399.

"A bill of this kind is usually brought, either (1) to obtain
129 a necessary discovery of facts in aid of the defence to the original bill, or (2) to obtain full relief to all parties, touching the matters of the original bill."

Story's Equity Pldg., Sec. 399.

New and distinct matters are intrdouced by the cross-bill in this case which are not embraced in the original. The subject of the original and cross-bill is not the same.

A cross-bill is merely auxiliary to—a dependency upon, and a part of the original suit. Its subject matter must be essentially connected with that of the original bill, and not extraneous thereto.

Springfield Manfg. Co. vs. Bernard et al., 81 Fed., 261.
Bates Fed. Prac., No. 386.

The court in that case said:

"The office of a cross-bill is either to warrant the grant of affirmative relief to the defendant in the original suit, to obtain a discovery in aid of the defense in that suit, to enable the defendant to interpose a more complete defense than that which he could present by answer, or to obtain full relief to all parties, and a complete determination of all controversies which arise out of the matters charged in the original bill. * * * The issues raised by the cross-bill must be so closely connected with the cause of action in the original suit that the cross suit is a mere auxiliary or dependency upon the original suit."

As I understand the cross-bill in this case, it seeks an accounting with Knight, Yancey & Co., the bankrupts, and claims that on such sum as may be recovered in this suit the complainants in said cross-bill have a lien, and that the same should be so decreed by this court.

In my opinion, said cross-bill cannot be considered as a defence to the original bill, or as a proceeding necessary to a complete determination of the matter in litigation in the original bill. It is not auxiliary to or a dependency upon this suit and not essentially connected with the original bill therein.

Springfield Mfg. Co. vs. Bernard et al., 81 Fed., 261; 53 Fed., 850; 46 Fed., 851.

130 This suit is one in which the trustee in bankruptcy, representing all the creditors of the bankrupt's estate, seeks to recover property or a fund, which it is claimed was preferentially transferred to the defendants, Latham & Co., by the bankrupts, Knight, Yancey & Co., in payment of an alleged indebtedness to said Latham & Co. The fund, if recovered, is not to be administered in this court, but in the bankrupt court. This suit is in the name of the trustee in bankruptcy and he seeks to avoid the alleged preferential transfer, and to recover the said fund to be administered by the bankrupt court. If recovered in this court, it is to be turned over to that court as a part of the bankrupt estate. That court being then in the actual possession of the fund for administration will draw to it the right to decide upon conflicting claims thereto. If the alleged preferential transfer is avoided, and the trustee recovers the fund sued for, it then becomes a part of the assets of the bankrupt state in the possession of, and in the course of administration by the bankrupt court.

All persons entitled to participate in said assets, or claiming a lien thereon, may come into that court, and, under the jurisdiction acquired by the proceeding in bankruptcy, have the rights adjudicated.

The motion to dismiss the said cross-bill is granted; and it is hereby ordered that said cross-bill be, and the same is hereby, stricken out.

Filed March 21, 1911.

RICHARD JONES, *Clerk.*

131 *Decree Striking from File the Answer of Knauth, Nachod & Kuhne to Original Bill and Striking from File the Cross-bill and Amended Cross-bill of Knauth, Nachod & Kuhne.*

Circuit Court of the United States for the Southern District of Alabama, November Term, 1910.

In Equity. No. 279.

WILLIAM S. LOVELL, Trustee in Bankruptcy of Knight, Yancey & Company,
vs.
LATHAM & COMPANY et al.

This cause having been argued and submitted on the motions of complainant William S. Lovell, trustee, to strike out and from the file the answer of Knauth, Nachod & Kuhne to the original and amended bill of complaint, and the cross-bill and amended cross-bill filed by Knauth, Nachod & Kuhne; and the same being duly considered by the court, it is ordered and decreed by the court that said answer and said cross-bill and amended cross-bill be and the same are hereby stricken out and from the file herein at the cost of said Knauth, Nachod & Kuhne.

Made this 21st day of March A. D. 1911.

HARRY T. TOULMIN, *Judge.*

Filed and entered March 21, 1911.

RICHARD JONES, *Clerk.*

Decree Allowing Complainant to Amend Original Bill by Striking Therefrom Paragraph Numbered 4½, etc.

Circuit Court of the United States for the Southern District of Alabama, November Term, 1910.

In Equity. No. 279.

WILLIAM S. LOVELL, Trustee, et al.
vs.
LATHAM & COMPANY et al.

This cause having been submitted on the motion of com-
132 plainants to be allowed to amend the original bill herein by striking out and from said bill the paragraph numbered 4½; and by striking from said bill that portion of the prayer thereof, as follows: "That all firms, persons or corporations who claim any right, title or interest in or to said 7,800 bales of cotton be made parties defendant to this bill and be cited by publication to answer this bill," which portions of said bill appear by the amendment thereto filed on May 5th, 1910. It is ordered by the court that said

motion be and the same is hereby granted and that said portions of said bill be and the same are hereby stricken out and from the said bill.

This March 21st, A. D. 1911.

HARRY T. TOULMIN, *Judge.*

Filed and entered March 21, 1911.

RICHARD JONES, *Clerk.*

Assignment of Errors by Knauth, Nachod & Kuhne.

Circuit Court of the United States for the Southern District of Alabama.

In Equity. No. 279.

CLARENCE E. FROST and W. S. LOVELL, as Receivers, and JOE T. GIBSON, Complainants,
vs.
LATHAM & COMPANY, a Partnership, et al., Respondents.

In Equity. No. 279.

FRIEDRICH NACHOD and Others, Complainants,
vs.
LATHAM and Others, Defendants.

In Equity. No. 279.

WILLIAM S. LOVELL, as Trustee, Complainant,
vs.
LATHAM & COMPANY, a Partnership, Respondent.

The defendants and ancillary, cross or other complain-ts (Friedrich Nachod, Max Jaffe, Wilhelm Knauth, August Stern,
133 Oscar L. Gubelman, Arend H. Weingardt, Rollin C. Newton, Mary W. Knauth, and Percival Kuhne, composing the co-partnership firm of Knauth, Nachod & Kuhne), being about to ask for the allowance of an appeal from the order and decree herein (to the effect, among other things, that their "said answer and said cross-bill and amended cross-bill be and the same are hereby stricken out and from the file herein at the cost of said Knauth, Nachod & Kuhne"), made and entered on or about March 21, 1911, do hereby make the following assignment of errors in said decree and in the proceedings of court:

1. The circuit court erred in striking out the answer and bill of Knauth, Nachod & Kuhne, whether said bill be characterized as a cross-bill or as an ancillary or other original bill. The court had seized and sequestered property that belonged to them. It had thereby prevented them from following said property and invoking the aid of any other tribunal in asserting their right to the same.

It had then permitted the original complainant, the said receivers and Gibson, to make all persons, claiming an interest in said property, parties hereto and to cite them to answer their bill. It had then permitted a bond to be substituted in lieu of said property, conditioned that the property would be forthcoming to answer the final decree of the court in this suit. Being thus called upon to do so, Knauth, Nachod & Kuhne appeared and answered the bill of said complainants and were permitted by the court to file their own bill herein. Their answer and bill have now been stricken out, and they have been decreed to pay costs for doing what the court had permitted the said original complainants call upon them to do. It is submitted that the said order or decree, striking out the answer and bill of Knauth, Nachod & Kuhne with costs against them, deprives them of their property contrary to law, contrary to equity and without due process of law and denies to them the equal protection of the laws; and, therefore, that it is in contravention, among other things, of Article V and Article XIV of the amendments to the constitution of the United States.

2. The circuit court erred in treating the bill of Knauth, Nachod & Kuhne as a suit for an accounting. They brought their
134 suit on the theory that property belonging to them had been seized and sequestered by the court and that they were called upon to present to the court any claim they might have to such property; and on the further theory that, even if they had not been expressly called upon to do so, they were entitled to ask a court of equity, having possession of their property, to protect and enforce their rights therein; and on the further theory that all other tribunals were closed to them when the circuit court took possession of the property and that the bond stands in place of the property and that the decree releasing it is a bar to a suit to recover the same in any other court; and on the further theory that when a court of equity acquires jurisdiction of the res of a controversy, its jurisdiction excludes that of all other tribunals. An accounting by the bankrupts and the trustee was asked for merely as a convenient and proper means of establishing the title of Knauth, Nachod & Kuhne to the property in question and of determining the rights, if any, of all other parties therein. But the bill was drawn with a view to making all necessary proof, whether an accounting should be decreed or not. It is submitted, however, that Knauth, Nachod & Kuhne should not have been turned out of court, even if they had asked for too much or too little or the wrong relief.

3. The circuit court erred in treating the bill of Knauth, Nachod & Kuhne distinctively and exclusively as a pure cross-bill. They filed their bill expressly as "their amended cross-bill of complaint (or their petition or bill of complaint in intervention, if the court hold that it should be so denominated"). It is submitted that it is clearly of an original and ancillary character, as well as of the nature of a cross-bill. Process thereon was prayed for and issued and served, on some defendants within the district and on the rest without the district as provided by a decree of the court.

4. The circuit court erred in holding that the bill of Knauth, Nachod & Kuhne cannot be considered a defense to the original bill.

The said receivers and Gibson had alleged, among other things, that the property in question belonged to the bankrupt estate and had sought a decree in their favor. Knauth, Nachod & Kuhne
135 alleged that the property, or some part thereof, belonged to them and that their rights were prior and paramount to the rights of the bankrupt estate and sought a decree in their favor. It is submitted that this was a defense to the original bill.

5. The circuit court erred in holding that the bill of Nnauth, Nachod & Kuhne could not be considered a proceeding necessary to a complete determination of the litigation in the original bill. The matter in litigation in the original bill was the property, a part of which had been seized and sequestered by the court, and the right, title and interest therein of all persons. It is true that, as against Latham & Company, the original complainants based title on an illegal preference; but they alleged title and called upon all persons to answer their bill. The property, or part thereof, belonged to Knauth, Nachod & Kuhne. It is submitted that the court could not finally determine either the title or right possession of either Latham & Company or of the original complainants without passing on the rights of Knauth, Nachod & Kuhne.

6. The circuit court erred in holding that the bill of Knauth, Nachod & Kuhne was not auxiliary to or a dependency on this suit and not essentially connected with the original bill. The bill of Knauth, Nachod & Kuhne was filed for the purpose of establishing a right, title and interest in property in the possession or under the dominion and otherwise subject to the jurisdiction of the court in this suit. It is submitted that such bill is auxiliary and ancillary to the suit in which the court has assumed jurisdiction and taken possession, actually or potentially, of the res of the controversy.

7. The circuit court erred in holding that the property of Knauth, Nachod & Kuhne, in its possession or under its dominion, should be turned over to the bankruptcy court or to any other court for administration. No other court has possession or dominion of the property or can hear the claim of Knauth, Nachod & Kuhne thereto and award them the possession thereof. It is submitted that they were not required to await the determination of the litigation, between the original complainants and Latham & Company, and then follow the proceeds, if any, into some other court. It is further sub-
136 mitted that, were the property in the possession of the bankruptcy court, Knauth, Nachod & Kuhne would be entitled to establish their right thereto by a plenary suit in a court of competent jurisdiction, including the United States circuit court. (Sec. 23, Bankruptcy Act.) Knauth, Nachod & Kuhne claim that the property in question belongs to them and that the rights of the trustee are inferior and subject to their rights. They also claim that if the property were in the possession of the bankruptcy court, it would only be entitled to administer the same subject to their rights or by providing adequately for the satisfaction of their interest in the property.

7. The circuit court erred in ignoring the possibility that Latham & Company may succeed as against the trustee. Then the property of Knauth, Nachod & Kuhne will be lost to them, after the court had

sequestered it and allowed a bond to be substituted for it and thereby prevented them from following it and invoking the aid of any other court to obtain it.

8. The circuit court erred in granting the motion of the original complainants, the receivers and Gibson, and thus allowing them to amend their bill by striking out paragraph No. 4½ and the part of the prayer relating thereto, by which they had alleged that there were certain unknown persons who claimed some right, title and interest in the seventy-eight hundred (7800) *hundred* bales of cotton in question, or some parts thereof, and prayed that all persons claiming an interest therein be made parties and cited to answer the original *ball.* Having been thus called upon to do so, Knauth, Nachod & Kuhne had appeared and answered and, by leave of the court, filed their own bill herein in which they asked for affirmative relief. That is to say: Knauth, Nachod & Kuhne were sued to present their claim to the res of the controversy and did so. Then the original complainants' bill was, in effect, discontinued as to them without costs and their answer and bill stricken out with costs against them. Had Knauth, Nachod & Kuhne not been thus sued, they would have filed an original bill expressly of an ancillary and auxiliary character. It is submitted that the original complainants should not have been permitted to thus amend their bill at all, but, if so, it should have been expressly without prejudice to the
137 rights of Knauth, Nachod & Kuhne in the suit and only upon payment of the costs and fees incurred by them.

9. The Circuit Court erred in granting the motion of William S. Lovell, as trustee in bankruptcy of Knight, Yancey & Company, to strike from the file in this cause the answer and bill of Knauth, Nachod & Kuhne. It is submitted that the trustee's remedy, if any, was by demurrer or answer and not by motion and that said motion should have been dismissed on that ground.

10. The circuit court erred in disregarding its own order permitting Knauth, Nachod & Kuhne to file their bill in this cause. No motion was made to vacate said order and no claim has been made that it was irregular in any respect. It stands res adjudicata that said bill was properly filed. It is submitted that the order striking the same from the file of the cause is inconsistent, conflicting and contrary to the orderly administration of justice.

11. The circuit court erred further in striking out the bill of Knauth, Nachod & Kuhne, because the motion was made on grounds that went to the merits of the bill and, in spite of the attempt to appear only specially, constituted a general appearance and subjected the trustee to the personal jurisdiction of the court, apart from the fact that he had already appeared generally in the cause and been substituted as sole complainant therein.

12. The circuit court erred in holding the law against Knauth, Nachod & Kuhne. It is submitted that the decree of the court striking out the bill of Knauth, Nachod & Kuhne is contrary to the admitted facts in the cause, contrary to law and contrary to equity.

Wherefore the defendants and ancillary, cross or other complain-ts, Knauth, Nachod & Kuhne, pray that the said decrees of the

circuit court against them (entered on or about March 21, 1911, striking out their bill and answer, and amending the bill of the original complainants so as to, in effect, discontinue the same as against them) be reversed.

STEVENS & LYONS,
Solicitors and Counsel for Knauth.
Nachod & Kuhne, Mobile, Alabama.

138 BRIESEN & KNAUTH,
Of Counsel for Knauth, Nachod & Kuhne,
25 Broad Street, New York, N. Y.

The foregoing assignment of errors was presented with the application for appeal April 19, 1911.

DAVID D. SHELBY,
U. S. Circuit Judge.

Filed April 24, 1911.
RICHARD JONES, *Clerk.*

NOTE.—The foregoing assignment of errors on the former appeal in this cause is retained in the transcript of record on this appeal at the request of counsel for appellees Latham & Company and American Surety Company of New York. The decrees reversed on the former appeal are retained so as not to have to reprint or change the paging of the former assignment of errors.

139 *Motion of Edmond Latham et al. to Dismiss Cross-bill of Knauth, Nachod & Kuhne.*

In the United States District Court, Sitting at Mobile.

No. 279. In Equity.

FRIEDRICH NACHOD et al., Complainants in Cross-bill,
vs.
EDMOND LATHAM et al., Defendants.

Come Edmond Latham, Charles Latham and Raoul Latham, respondents in said cross-bill as last amended, and jointly and severally, but without prejudice to or waiver of their demurrer heretofore filed to said amended cross-bill, move to dismiss the said amended cross-bill for the following separate and several grounds, viz:

First. Because it seeks to introduce into this cause matters that are distinct from, independent of, and have no connection with those shown by said amended cross-bill to be otherwise involved herein, and which matters so sought to be introduced herein are such as cannot properly be litigated or investigated in this suit but only in a suit or proceeding separate from and independent of this cause.

Second. Because it seeks to introduce into this cause matters that are distinct from, independent of, and have no connection with those shown by said amended cross-bill to be otherwise involved herein,

and which matters so sought to be introduced herein are such as can not properly be litigated or investigated in this suit but only in a suit or proceeding separate from and independent of this cause; nor are the rights claimed by complainants in the original bill and those claimed by cross-complainants in the cross-bill the same or of the same class or nature, nor is there any privity between them as to such rights.

Third. Because it is multifarious and the matters sought to
140 be introduced thereby, if included in the original bill of complaint filed in this cause, would have rendered such original bill subject to demurrer for multifariousness as joining distinct and disconnected matters in one suit.

Fourth. Because William S. Lovell is sought to be made a party respondent to this amended cross-bill as trustee in bankruptcy of Knight, Yancey & Company and it is not shown that at the time of the original cross-bill being filed by permission of court, he was a party to this cause as such trustee, thereby seeking to introduce a new party.

Fifth. Because it does not appear from the amended cross-bill but that the complainants therein were not parties to this cause at the time of the filing of their amended cross-bill, nor is it alleged that the consent of any of the then parties to such cause was obtained to such filing or to their coming into it.

Sixth. Because said amended cross-bill fails to allege facts entitling complainants therein to the relief or discovery prayed and seeks to have respondents thereto disclose sufficient facts to so entitle them, if, perchance, such facts there be.

Seventh. Because said amended cross-bill or petition of intervention in a fishing bill.

Eighth. Because the funds alleged in said amended cross-bill to have been fraudulently secured from the complainants therein are not by it certainly or positively identified with or traced into the goods or res relative to which a constructive trust is sought to be established.

Ninth. Because said amended cross-bill fails to specify definitely or positively any property into which it seeks, or may seek, to trace the funds alleged to have been fraudulently secured from the complainants therein.

Tenth. Because there is no equity in said amended cross-bill.

Eleventh. Because the said amended cross-bill is in substance and effect in conflict with and adverse to the rights of the complainants and the cause as made in the original suit to the extent of the whole claim set up in said amended cross-bill.

141 Twelfth. Because said amended cross-bill shows that none of these movants ever had the possession or control of the res relative to which a trust is sought to be established, nor is it shown that they ever will have it.

Thirteenth. Because it is uncertain whether this court ever could afford effective relief as the res is without its jurisdiction and its present possessors are also shown to be without the jurisdiction of this court and the forthcoming bond made by them is shown only

to be to answer the outcome of the decree in the original cause herein.

Fourteenth. Because there was no property in custodia legis, so far as this court is concerned, at the time of the filing of the first paper in this cause by the complainants in the amended cross-bill, and Latham & Company, its possessors, were then without the jurisdiction of this court, the forthcoming bond by them is only to answer the outcome of the decree in the original cause herein and runs only to the parties named in such bond or indicated therein, who are not cross-complainants, and said amended cross-bill was filed too late.

Fifteenth. Because before the amended cross-bill was filed, or any paper by the cross-complainants, and after the invitation by the original complainants or some of them, to answer their bill, the cotton was removed and in its place there was substituted a bond running only to the then complainants, or their successors, which of necessity operated as an amendment of the proceedings so far as to make that clause meaningless and reduce the litigation to only those who should be interested under said bond, and this bond by its very terms had no relation to these cross complainants.

Sixteenth. Because the amended cross-bill is in a double aspect, viz: to enforce a trust in specific property or to charge the estate generally, and in the last aspect has no equity.

Seventeenth. Because the cross-bill is of double aspect in that it seeks recovery whether it can trace or cannot trace funds into the cotton, and in the latter aspect is bad.

Eighteenth. Because the amended cross-bill seeks indemnity from the general estate of the bankrupt.

142 Nineteenth. Because it is uncertain and one cannot tell whether the amended cross-bill seeks to establish a claim upon the specific cotton involved in the original suit or to be indemnified from the general estate of the bankrupt.

Twentieth. Because it is repugnant in that it claims to disaffirm the use of its funds and to affirm same by tracing funds into the cotton involved in the original suit.

Twenty-first. Because it sets up matter irrelevant in the original cause.

Twenty-second. Because respondents to the original bill, Latham & Company, never gave their consent to the amendment to the bill inviting others into the litigation, nor consented to the filing of the original or amended cross-bill or the so-called answer of the cross-complainants.

Twenty-third. Because said amended cross-bill alleges no facts showing that these defendants have in their possession or under their control any cotton in which the said cross-complainant has any right, title or interest whatever, or that the said cross-complainant is entitled to any relief against these cross-defendants, but is filed, so far as these defendants are concerned, for a discovery only, and the said cross-complainant therein hath waived oath or affirmation by these defendants to their answer.

Twenty-fourth. Because cross-complainants declined to ratify the

investments of said money in said cotton and having claimed said money with interest, the said complainants are estopped from asserting any right to the cotton in which said money is alleged to have been invested.

Twenty-fifth. Because the said cross-bill shows upon its face that the said cross-complainants have not elected to follow the proceeds of their money into the said cotton and to claim the cotton itself, but assert only a lien upon the said cotton for the re-payment of their money, although they allege no contract, either express or implied, which could confer upon them a lien upon said cotton.

Twenty-sixth. Because it is impossible to ascertain from the allegations of the said cross-bill, what, if any, cotton that ever went
143 in the possession of these defendants had been purchased with the cross-complainants' money, and what, if any, of said cotton that went into the possession of these defendants is the subject matter of the complainants' alleged rights.

Twenty-seventh. That this court is without jurisdiction to hear and determine the matters and things in said amended cross-bill as therein pleaded and alleged.

Twenty-eighth. That the cross-complainant- had no capacity, power or authority to institute, maintain or prosecute said cross-bill as amended in the form and for the matters and things therein alleged.

Twenty-ninth. That the cross complainants have not in and by said amended cross-bill made and stated any such cause of action as does or may entitle them as is thereby sought and prayed for against and from these defendants.

HOWE, FENNER, SPENCER & COCKE,
Solicitors for Latham & Company.

STATE OF ALABAMA,
Mobile County, ss:

Walker B. Spencer makes solemn oath and says, that he is one of the solicitors for the defendant, Latham & Company, for the purpose of filing the foregoing motion; that he is informed and believes and on such information and belief states the fact to be that none of the members of the said firm are present in the United States, and that the foregoing motion is not interposed for delay.

W. B. SPENCER.

Subscribed and sworn to before me this 25th day of October, 1913.

RICHARD JONES,
Clerk U. S. District Court,
Southern District of Alabama.

I hereby certify that in my opinion the foregoing motion is well founded in point of law.

W. B. SPENCER,
Solicitor for the Defendant Latham & Company for the Purpose of Filing This Motion.

Filed October 25th, A. D. 1913.
RICHARD JONES, *Clerk.*

144 *Motion of Receivers & Trustee in Bankruptcy to Dismiss Cross-bill of Knauth, Nachod & Kuhne.*

In the United States District Court, Sitting at Mobile.

No. 279. In Equity.

FRIEDRICH NACHOD et al., Complainants in Cross-bill,
vs.
EDMOND LATHAM et al., Defendants.

Come Clarence E. Frost and William S. Lovell as Receivers in Bankruptcy of the Estate of Knight, Yancey & Company, and William S. Lovell as Trustee in Bankruptcy for the Estate of Knight, Yancey & Company, as respondents to this cross-bill as last amended, and separately and severally and without prejudice to or waiver of their demurrer heretofore filed to said amended cross-bill, move to dismiss the said amended cross-bill upon the following separate and several grounds, viz:

First. Because it seeks to introduce into this cause matters that are distinct from, independent of, and have no connection with those shown by said amended cross-bill to be otherwise involved herein, and which matters so sought to be introduced herein are such as can not properly be litigated or investigated in this suit but only in a suit or proceeding separate from and independent of this cause.

Second. Because it seeks to introduce into this cause matters that are distinct from, independent of, and have no connection with those shown by said amended cross-bill to be otherwise involved herein, and which matters so sought to be introduced herein are such as can not properly be litigated or investigated in this suit but only in a suit or proceeding separate from and independent of this cause; nor are the rights claimed by complainants in the
145 original bill and those claimed by cross-complainants in the cross-bill the same or of the same class or nature, nor is there any privity between them as to such rights.

Third. Because it is multifarious and the matters sought to be introduced thereby, if included in the original bill of complaint filed in this cause, would have rendered such original bill subject to demurrer for multifariousness as joining distinct and disconnected matters in one suit.

Fourth. Because William S. Lovell is sought to be made a party respondent to this amended cross-bill as trustee in bankruptcy of Knight, Yancey & Company and it is not shown that at the time of the original cross-bill being filed by permission of court, he was a party to this cause as such trustee, thereby seeking to introduce a new party.

Fifth. Because it does not appear from the amended cross-bill or otherwise but that the complainants therein were not parties to this cause at the time of the filing of their amended cross bill, nor is it

alleged that the consent of the then parties to such cause was obtained to such filing or to their coming into it.

Sixth. Because said amended cross-bill fails to allege facts entitling complainants therein to the relief or discovery prayed and seeks to have respondents thereto disclose sufficient facts to so entitle them if, perchance, such facts there be.

Seventh. Because said amended cross bill or petition of intervention is a fishing bill.

Eighth. Because the funds alleged in said amended cross-bill to have been fraudulently secured from the complainants therein are not by it certainly or positively identified with or traced into the goods or res relative to which a constructive trust is sought to be established.

Ninth. Because said amended cross-bill fails to specify definitely or positively any property into which it seeks, or may seek, to trace the funds alleged to have been fraudulently secured from the complainants therein.

Tenth. Because there is no equity in said amended cross-bill.

Eleventh. Because the said amended cross-bill is in substance and effect in conflict with and adverse to the rights of the com-
146 plainants and the cause as made in the original suit to the extent of the whole claim set up in said amended cross-bill.

Twelfth. Because said amended cross-bill shows that none of these movants ever had the possession or control of the res relative to which a trust is sought to be established, nor is it shown that they ever will have it.

Thirteenth. Because it is uncertain whether this court ever could afford effective relief as the res is without its jurisdiction and its present possessors are also shown to be without the jurisdiction of this court and the forthcoming bond made by them is shown only to be to answer the outcome of the decree in the original cause herein.

Fourteenth. Because there was no property in custodia legis, so far as this court is concerned, at the time of the filing of the first paper in this cause by the complainants in the amended cross-bill, and Latham & Company, its possessors, were then without the jurisdiction of this court, the forthcoming bond by them is only to answer the outcome of the decree in the original cause herein and runs only to the parties named in such bond or indicated therein, who are not cross-complainants, and said amended cross-bill was filed too late.

Fifteenth. Because there was no property in custodia legis, so far as this court is concerned, at the time of the filing of the first paper in this cause by the complainants in the amended cross-bill, and Latham & Company, its possessors, were then without the jurisdiction of this court, the forthcoming bond by them is only to answer the outcome of the decree in the original cause herein and runs only to the parties named in such bond or indicated therein who are not cross-complainants, and it is uncertain whether original complainants or any of them will succeed in the original suit as to which said bond alone relates, and in the event of failure the whole proceeding, so far as the cross-complainants are concerned, will have been a vain thing.

Sixteenth. Because the invitation extended by the original complainants, or some of them, in their bill as amended was by
147 the terms of the invitation "to answer this bill" thereby limiting the invitation's scope, and the amended cross-bill is a mere pretext to take advantage of this limited invitation and extend it beyond its scope.

Seventeenth. Because the sole purpose of the invitation of the original complainants or some of them, by the amendment adding paragraph 4½ to the bill was to effectually avoid a preference and by its nature was limited to only those who might claim rights under such alleged preference or in some way interfere with the avoidance of such preference by claiming any rights thereunder.

Eighteenth. Because before the amended cross-bill was filed, or any paper by the cross-complainants, and after the invitation by the original complainants, or some of them to answer their bill, the cotton was removed and in its place there was substituted a bond running only to the then complainants, or their successors, which of necessity operated as an amendment of the proceedings so far as to make that clause meaningless and reduce the litigation to only those who should be interested under said bond, and this bond by its very terms had no relation to these cross-complainants.

Nineteenth. Because the amended cross-bill is in a double aspect, viz: to enforce a trust in specific property or to charge the estate generally, and in the last aspect has no equity.

Twentieth. Because the cross-bill is of double aspect in that it seeks recovery whether it can trace or cannot trace funds into the cotton, and in the latter aspect is bad.

Twenty-first. Because the amended cross-bill seeks indemnity from the general estate of the bankrupt.

Twenty-second. Because it is uncertain and one cannot tell whether the amended cross-bill seeks to establish a claim upon the specific cotton involved in the original suit or to be indemnified from the general estate of the bankrupt.

Twenty-third. Because it is repugnant in that it claims to disaffirm the use of its funds and to affirm same by tracing funds into the cotton involved in the original suit.

Twenty-fourth. Because it sets up matter irrelevant to the original cause.

148 Twenty-fifth. Because respondents to the original bill, Latham & Company, never gave their consent to the amendment to the bill inviting others into the litigation, nor consented to the filing of the original or amended cross-bill, or the so called answer of the cross-complainants.

Twenty-sixth. Because said amended cross bill alleges no facts showing that these defendants have in their possession or under their control any cotton in which the said cross-complainants have any right, title or interest whatever, or that the said cross-complainants are entitled to any relief against these cross-defendants but is filed, so far as these defendants are concerned, for a discovery only, and the said cross-complainants therein have waived oath or affirmation by these defendants to their answer.

Twenty-seventh. Because cross complainants declined to ratify the investment of said money in said cotton and having claimed said money with interest, the said complainants are estopped from asserting any right to the cotton in which said money is alleged to have been invested.

Twenty-eighth. Because the said cross-bill shows upon its face that the said cross-complainants have not elected to follow the proceeds of their money into the said cotton and to claim the cotton itself, but assert only a lien upon the said cotton for the re-payment of their money, although they allege no contract, either express or implied, which could confer upon them a lien upon said cotton.

Twenty-ninth. Because it is impossible to ascertain from the allegations of the said cross-bill what, if any, cotton that ever went in the possession of these defendants had been purchased with the cross-complainants' money, and what, if any, of said cotton that went into the possession of these defendants is the subject matter of the complainants' alleged rights.

PERCY, BENNERS & BURR,
RICH & HAMILTON,
Solicitors for Receivers and Trustee Above Mentioned.

149 I, J. Gaillard Hamilton, one of the solicitors for cross-defendants, who move to dismiss as hereinabove set out, do hereby certify that the foregoing motion, in my opinion, is well founded in law.

J. GAILLARD HAMILTON,
Solicitor for C. E. Frost and W. S. Lovell, as Receivers, and W. S. Lovell, as Trustee.

I, J. G. Hamilton, one of solicitors for receivers and trustee, who move to dismiss as hereinabove set out, being duly sworn do say that neither of said receivers or trustee are residents of the Southern District of Alabama, according to his information and belief, and are not now in Mobile; further that the foregoing motion is not interposed for delay.

J. G. HAMILTON.

Sworn to and subscribed before me this 25th day of October, A. D. 1913, at Mobile, Alabama.

RICHARD JONES, JR.,
Deputy Clerk.

Filed October 25th, A. D. 1913.
RICHARD JONES, *Clerk.*

150 *Motion of American Surety Company to Dismiss Cross-bill of Knauth, Nachod & Kuhne.*

In the United States District Court, Sitting at Mobile.

No. 279. In Equity.

FRIEDRICH NACHOD et al., Complainants in Cross-bill,
vs.
EDMOND LATHAM et al.

Comes the American Surety Company of New York, respondent, in said cross bill as last amended and without prejudice to or waiver of its demurrer heretofore filed to said amended cross-bill, moves to dismiss the said amended cross-bill upon the following separate and several grounds, viz:

First. Because it seeks to introduce into this cause matters that are distinct from, independent of, and have no connection with those shown by said amended cross-bill to be otherwise involved herein, and which matters so sought to be introduced herein are such as can not properly be litigated or investigated in this suit but only in a suit or proceeding separate from and independent of this cause.

Second. Because it seeks to introduce into this cause matters that are distinct from, independent of, and have no connection with those shown by said amended cross-bill to be otherwise involved herein, and which matters so sought to be introduced herein are such as can not properly be litigated or investigated in this suit but only in a suit or proceeding separate from and independent of this cause; nor are the rights claimed by complainants in the original bill and those claimed by cross-complainants in the cross-bill the same or of the same class or nature, nor is there any privity between them as to such rights.

151 Third. Because it is multifarious and the matters sought to be introduced thereby, if included in the original bill of complaint filed in this cause, would have rendered such original bill subject to demurrer for multifariousness as joining distinct and disconnected matters in one suit.

Fourth. Because William S. Lovell is sought to be made a party respondent to this amended cross-bill as trustee in bankruptcy of Knight, Yancey & Company and it is not shown that at the time of the original cross-bill being filed by permission of court, he was a party to this cause as such trustee, thereby seeking to introduce a new party.

Fifth. Because it does not appear from the amended cross-bill or otherwise but that the complainants therein were not parties to this cause at the time of the filing of their amended cross-bill, nor is it alleged that the consent of any of the then parties to such cause was obtained to such filing or to their coming into it.

Sixth. Because said amended cross-bill fails to allege facts entitling complainants therein to the relief or discovery prayed and seeks to

have respondents thereto disclose sufficient facts to so entitle them, if perchance, such facts there be.

Seventh. Because said amended cross-bill or petition of intervention is a fishing bill.

Eighth. Because the funds alleged in said amended cross-bill to have been fraudulently secured from the complainants therein are not by it certainly or positively identified with or traced into the goods or res relative to which a constructive trust is sought to be established.

Ninth. Because said amended cross-bill fails to specify definitely or positively any property into which it seeks, or may seek, to trace the funds alleged to have been fraudulently secured from the complainants therein.

Tenth. Because there is no equity in said amended cross-bill.

Eleventh. Because the said amended cross-bill is in substance and effect in conflict with and adverse to the rights of the com-
152 plainants and the cause as made in the original suit to the extent of the whole claim set up in said amended cross-bill.

Twelfth. Because said amended cross bill shows that this movant -ever had the possession or control of the res relative to which a trust is sought to be established, nor is it shown that it ever will have it.

Thirteenth. Because it is uncertain whether this court ever could afford effective relief as the res is without its jurisdiction and its present possessors are also shown to be without the jurisdiction of this court and the forthcoming bond made by them is shown only to be to answer the outcome of the decree in the original cause herein.

Fourteenth. Because there was no property in custodia legis, so far as this court is concerned, at the time of the filing of the first paper in this cause by the complainants in the amended cross-bill, and Latham & Company, its possessors, were then without the jurisdiction of this court, the forthcoming bond by them is only to answer the outcome of the decree in the original cause herein and runs only to the parties named in such bond or indicated therein, who are not cross-complainants, and said amended cross-bill was filed too late.

Fifteenth. Because there was no property in custodia legis, so far as this court is concerned, at the time of the filing of the first paper in this cause by the complainants in the amended cross-bill, and Latham & Company, its possessors, were then without the jurisdiction of this court, the forthcoming bond by them is only to answer the outcome of the decree in the original cause herein and runs only to the parties named in such bond or indicated therein who are not cross-complainants, and it is uncertain whether original complainants or any of them will succeed in the original suit as to which said bond alone relates, and in the event of failure the whole proceeding, so far as the cross-complainants are concerned, will have been a vain thing.

Sixteenth. Because the invitation extended by the original complainants, or some of them, in their bill as amended was by
153 the terms of the invitation "to answer this bill" thereby limiting the invitation's scope, and the amended cross-bill is a

mere pretext to take advantage of this limited invitation and extend it beyond its scope.

Seventeenth. Because the sole purpose of the invitation of the original complainants or some of them, by the amendment adding paragraph 4½ to the bill was to effectually avoid a preference and by its nature was limited to only those who might claim rights under such alleged preference or in some way interfere with the avoidance of such preference by claiming any rights thereunder.

Eighteenth. Because before the amended cross-bill was filed, or any paper by the cross-complainants, and after the invitation by the original complainants, or some of them to answer their bill, the cotton was removed and in its place there was substituted a bond running only to the then complainants, or their successors, which of necessity operated as an amendment of the proceedings so far as to make that clause meaningless and reduce the litigation to only those who should be interested under said bond, and this bond by its very terms had no relation to these cross-complainants.

Nineteenth. Because the amended cross-bill is in a double aspect, viz: to enforce a trust in specific property or to charge the estate generally, and in the last aspect has no equity.

Twentieth. Because the cross-bill is of double aspect in that it seeks recovery whether it can trace or cannot trace funds into the cotton, and in the latter aspect is bad.

Twenty-first. Because the amended cross-bill seeks indemnity from the general estate of the bankrupt.

Twenty-second. Because it is uncertain and one cannot tell whether the amended cross-bill seeks to establish a claim upon the specific cotton involved in the original suit or to be indemnified from the general estate of the bankrupt.

Twenty-third. Because it is repugnant in that it claims to disaffirm the use of its funds and to affirm same by tracing funds into the cotton involved in the original suit.

154 Twenty-fourth. Because it sets up matter irrelevant to the original cause.

Twenty-fifth. Because respondents to the original bill, Latham & Company, never gave their consent to the amendment to the bill inviting others into the litigation, nor consented to the filing of the original or amended cross-bill, or the so-called answer of the cross-complainants.

Twenty-sixth. Because said amended cross-bill alleges no facts showing that this defendant has in its possession or under its control any cotton in which the said cross-complainants have any right, title or interest whatever, or that the said cross-complainants are entitled to any relief against these cross-defendants, but is filed, so far as the defendants are concerned, for a discovery only, and the said cross-complainants therein have waived oath or affirmation by these defendants to their answer.

Twenty-seventh. Because cross complainants declined to ratify the investment of said money in said cotton and having claimed said money with interest, the said complainants are estopped from asserting any right to the cotton in which said money is alleged to have been invested.

Twenty-eighth. Because the said cross-bill shows upon its face that the said cross-complainants have not elected to follow the proceeds of their money into the said cotton and to claim the cotton itself, but assert only a lien upon the said cotton for the re-payment of their money, although they allege no contract, either express or implied, which could confer upon them a lien upon said cotton.

Twenty-ninth. Because it is impossible to ascertain from the allegations of the said cross-bill what, if any, cotton that ever went in the possession of this defendant had been purchased with the cross-complainants' money, and what, if any, of said cotton that went into the possession of this defendant is the subject matter of the complainant's alleged rights.

Thirtieth. That this court is without jurisdiction to hear and determine the matters and things in said amended cross-bill as therein pleaded and alleged.

155 Thirty-first. That the cross-complainant has no capacity, power or authority to institute, maintain or prosecute said cross-bill as amended in the form and for the matters and things therein alleged.

Thirty-second. That the cross-complainants have not in and by said amended cross-bill made and stated any such cause of action as does or may entitle them as is thereby sought and prayed for against and from this defendant.

HOWE, FENNER, SPENCER & COCKE,
Solicitors for American Surety Company.

I hereby certify that in my opinion the foregoing motion is well founded in point of law.

W. B. SPENCER,
Solicitor for the American Surety Company for the Purpose of Filing said Motion.

Before me, Rich'd Jones, Clerk of the United States District Court for the Southern District of Alabama, personally appeared W. B. Spencer, who being by me first duly sworn on oath says that he is attorney for the American Surety Company of New York for the purpose of filing the foregoing motion, and that he makes this oath for and on behalf of the said American Surety Company, and affiant says that the motion is not filed for delay.

W. B. SPENCER.

Subscribed and sworn to before — this 25th day of October, A. D. 1913.

RICHARD JONES,
Clerk United States District Court, Mobile, Alabama.

Filed October 25th, A. D. 1913.

RICHARD JONES, *Clerk.*

156 District Court of the United States for Southern District of Alabama.

No. 279. In Equity.

W. S. LOVELL, Trustee, etc., et al.,
versus
LATHAM & COMPANY et al.

(Opinion January 24, 1914.)

Percy, Benners & Burr, of Birmingham, Ala.; Rich & Hamilton, of Mobile, Ala., Solicitors for Trustee in bankruptcy.

Howe, Fenner, Spencer & Cocke, of New Orleans, La., Solicitors for Latham & Company, on motion to dismiss cross-bill.

W. B. Spencer, of New Orleans, La., on motion of American Surety Co. to dismiss cross-bill.

Stevens & Lyons, of Mobile, Ala.; Briesen & Knauth, of New York, N. Y., Solicitors for Knauth, Nachod & Kuhne, Cross-Complainants.

TOULMIN, *Judge:*

This suit is one in which the trustee in bankruptcy, representing all creditors of the bankrupt estate, seeks to recover property, or a fund representing said property, which it is alleged and claimed was preferentially transferred to the defendants, Latham & Co., by the bankrupts, Knight, Yancey & Company, in payment of an indebtedness to said Latham & Company.

The suit seeks to avoid the alleged preferential transfer, and to recover the said fund to be administered by the bankrupt court for the benefit of all creditors of the bankrupts.

157 A preference is voidable by the trustee, and he may recover the property or its value. There is no authority in any other person to maintain the required action. Any other rule, even were the statute not clear on this point, would lead to confusion.

Collier on Bankruptcy (9th Ed.) p. 824, 827; 175 Fed. 335; 5 Am. Bk. Rep. 567.

It is only through the instrumentality of the trustee that creditors can recover, and subject to the payment of their claims, the property which the bankrupt fraudulently transferred prior to the adjudication in bankruptcy. Creditors can have no remedy which will reach property fraudulently conveyed, except through the trustee. All such property, by the express words of the Bankrupt Act, vest in the trustee by virtue of the adjudication and of his appointment.

98 U. S. 20; 102 U. S. 647; Collier on Bankruptcy, supra.

If the delivery by the bankrupts of the cotton to Latham & Company was a preference, the trustee only can maintain a suit to avoid

it. He may not assign or transfer to another this right of avoidance. 15 Am. Bk. Rep. 388; Collier on Bankcy. (9th Ed.) 824; 175 Fed. 335.

The issue in this case is whether the bankrupts made a preferential transfer to the defendants, Latham & Company, of certain cotton as claimed and alleged in the complaint. If the plaintiff establishes his said claim he would be entitled to recover the cotton or its value. If he fails to establish said alleged transfer he would not be entitled to recover said cotton or its value. If such failure had any effect on the title to the cotton, it would be to make it good in Latham & Company, they having acquired the same by the said transfer of Knight, Yancey & Company, the bankrupts.

The cross-complainants in this suit are not in fact named
158 as defendants in the bill of complaint, or in the subpœna, and no relief is prayed against them, and no service has been had upon them. They are not parties to the original bill, and cannot rightly file or be parties complainant to a cross-bill thereon. 172 Fed. 504.

It is a rule of equity pleading prevailing in the federal courts that one who is not a party to a suit cannot file or join in a cross-bill, or other pleading to the merits until he becomes a party to the suit by some recognized mode of equity procedure. 172 Fed. 504; 175 Fed. 517; 166 Fed. 347.

The cross-complainants came into the case by invitation, contained in the prayer of the bill to unknown persons who might have or claim to have any right or interest in the subject-matter of the suit. Whereupon, the cross-complainants came into court and asked permission to file a cross bill.

The granting or refusing permission to file a cross-bill is largely in the discretion of the court. 151 Fed. 563, 566. The court, in the exercise of its discretion, granted permission to file the cross-bill, being at the time ignorant of its subject-matter and what its real purpose and allegations were. Subsequently, on motion of complainant and the defendants, Latham & Company, to strike out said cross-bill, after argument thereon and examination of the cross-bill, the court was of opinion that it had improvidently granted permission to file it, and sustained the motion to strike. On appeal, the Circuit Court of Appeals held that this court erred in summarily striking out the cross bill and reversed the case for further proceedings.

It now comes up on demurrers to the cross-bill and on motion to dismiss it for want of equity and on various other grounds set out in the demurrers and motion.

A cause of action is a matter for which an action may be brought. It is the matter of the complaint or claim on which a given action is in fact grounded, whether or not legally maintainable. The
159 cause of action in this case is the alleged preferential transfer of certain cotton by Knight, Yancey & Company, bankrupts, to Latham & Company. On that cause of action the trustee in bank-

ruptcy has the authority to maintain the required action to avoid the preference, to set aside the transfer and to recover the cotton or its value. This court is, by the original suit, called upon by the trustee to ascertain and establish his right or title to certain cotton as against adverse claimants, Latham & Company, who are made defendants to the suit, and not to any and all persons who may voluntarily come into the case and assert a claim to said cotton. The cross-complainants come into this case by a cross bill and seek to impress a trust in their favor upon various properties and certain cotton in the hands of the trustee in bankruptcy. Any such claim is not germane or pertinent to the original cause of action in the case, and cannot exert any influence in the trial and determination of the issue in it. If the issue made by the original bill can be completely disposed of without deciding upon any claim the cross complainants may have or be supposed to have against Latham & Company, defendants to the original bill, or upon the cotton transferred to said Latham & Company by the bankrupts, as alleged, then the cross-bill filed in this cause is not auxiliary or dependent upon the original suit.

154 Fed. 1003.

The cross-bill prays that the bankrupts be adjudged and decreed to have received the sum of $98,000.00 from the cross-complainants, and to have held the same as their money and property. But the able counsel for cross-complainants, in his brief and argument as I understood it, stated that they presented no personal demand against the bankrupts.

The cross-bill has no prayer for relief against the trustee, the complainant in this suit, further than to seek a discovery from him as to many matters which, in my opinion, are not involved in this suit and have no connection with it, so far as the complainant is concerned. In fact, the counsel stated that the cross-bill is confined to an effort to impress a trust in favor of the cross-complainants upon various and certain property in the hands of the trustee in bankruptcy, but which he admits in his brief was beyond the power of this court in this cause.

The cross-bill also seeks and prays that the transfer by the bankruptcy to Latham & Company, of the cotton mentioned in the bill of complaint, be adjudged "invalid and void and of no effect." It further seeks and prays that the cross complainants be subrogated to any right, title and interest which the trustee may have in any and all cotton, bonds or other property into which their said money may have been converted, and that they be subrogated to any rights which the said trustee may have under said bonds.

I think the law is well settled that if the transfer and delivery by the bankrupts of the cotton in question to Latham & Company was a preferential transfer, as alleged in the original bill, the trustee only can maintain a suit to avoid it. He may not assign or transfer to another this right. Neither, in my opinion, can the cross-complainants be subrogated, that is, substituted for the trustee in the assignment of such rights as claimed.

Collier on Bankcy. (9th Ed.) p. 824; 15 Am. B. Rep. 388; 176 Fed. 335; 98 U. S. 20; 102 U. S. 647, supra.

A cross-bill which sets up matters not pertinent to the original bill and seeks no relief against the original plaintiffs, is without equity.
23 Ala. 219.

A cross-bill is a bill brought by a defendant in a suit against the complainant in the same suit, or against the other defendants in the same suit, or against both, touching the matters in question in the original bill.
1 Beach on Modern Equity Practice, Secs. 421, 422; Story's Equity Pleading No. 389.

The matters sought to be brought by the cross-bill into con-
161 troversy between the cross-complainants therein and their co-defendants do not seem to me to be germane to, or to have any connection with the matter in controversy between the complainant in the original bill and the said defendants Latham & Company. "This is a litigation exclusively between the cross-complainants and said Latham & Company, with which the complainant in the original bill should not be embarrassed, or the record encumbered."
The cross-bill should not introduce new and distinct matters not embraced in the original bill, as they cannot be properly examined in that suit, but constitute the subject matter of an original, independent suit. "A cross-bill is auxiliary to the original suit and a dependency on it."
58 U. S. 591, 594; 154 Fed. 1003.

How are the facts alleged in the cross bill auxiliary to the original suit? How do they give aid or furnish help to that suit, of which the cause of action is an alleged preferential transfer of certain cotton by Knight, Yancey & Co., bankrupts, to defendants Latham & Company?
The cross-complainants are seeking to impress a trust upon certain cotton a part of which they allege their money purchased, and that they have a trust fund in that cotton. The cotton is in the possession of defendants Latham & Company, the title to which they claim under the transfer and delivery to them by Knight, Yancey & Co.
Assuming that the cross-complainants have and can trace a trust fund into the said cotton, how must they proceed to establish their claim and to impress their trust upon said cotton? Manifestly by a suit against said Latham & Company, who have said cotton in their possession and claiming it as their property. Some of the cross-complainants are resident citizens of New York State and some of Germany while Latham & Company are resident citizens of France. How and where does this court acquire jurisdiction to try and determine the controversy between these parties? It certainly ac-
quires no such jurisdiction under the Bankrupt Act; and
162 the general law conferring jurisdiction on the ground of diverse citizenship of the parties to the litigation has no application to the case, in view of the facts shown in it. No juris-

diction of the litigaton between the cross-complainants and the defendants Latham & Company has been acquired by the consent of said defendants.

Collier on Bankcy. (9th Ed.) 482; 17 Am. Bk. Rep. 668; 150 Fed. 279.

On the contentions and admissions of the counsel for the cross complainants, this case, in substance and effect, is a suit by them against Latham & Company of which, in my opinion, this court has no jurisdiction, whether the attitude of the so-called cross-complainants is that of cross complainants, or intervenors as they may be called.

A motion to dismiss a bill for want of equity should be sustained if, admitting the facts apparent on the face of the bill, whether well or ill pleaded, the complainant can have no relief. 75 Ala., 368; 130 Ala. 268; Id. 584.

I am of opinion that the motions to dismiss the cross-bill should be sustained, both for want of equity in said cross-bill, and for want of jurisdiction in this court to entertain the same.

Let a decree be entered accordingly.

Filed Jan'y 24/1914.

RICH'D JONES, *Clerk.*

163 *Decree Dismissing Cross-bill.*

District Court of the United States for the Southern District of Alabama.

No. 279. In Equity.

W. S. LOVELL, Trustee of Knight, Yancey & Company, Bankrupts,
versus
LATHAM & COMPANY et al.

KNAUTH, NACHOD & KUHNE
versus
LATHAM & COMPANY et al.

Bill and Cross-bill, in re Cross-bill of Knauth, Nachod & Kuhne.

This cause coming on to be heard and being argued and submitted on the motions of the Trustee in Bankruptcy, Latham & Company, et al., and American Surety Company to dismiss the cross-bill of Knauth, Nachod & Kuhne for want of equity and for want of jurisdiction in this court to entertain the same, and the same being duly considered by the court, the court is of opinion that said motions should be sustained on both of said grounds: It is therefore ordered, adjudged and decreed by the court that said motions to dismiss said cross-bill as to both of said grounds be and the same are hereby sustained, and that said cross-bill be and the same is

hereby dismissed out of court at the costs of the cross-complainants Knauth, Nachod & Kuhne.

Made this 24th day of January A. D. 1914.

HARRY T. TOULMIN, *Judge.*

Filed and entered January 24, 1914.

RICHARD JONES, *Clerk.*

164 *Assignment of Errors.*

District Court of the United States, Southern District of Alabama, Southern Division.

In Equity. No. 279.

WILLIAM S. LOVELL, as Trustee in Bankruptcy of Knight, Yancey & Company, Complainant,
against
LATHAM & COMPANY, Defendants.

FRIEDRICH NACHOD and Others, Complainants,
against
EDMOND LATHAM and Others, Defendants.

The complainants in the second above entitled bill of complaint herein, Knauth, Nachod & Kuhne, being about to ask for the allowance of an appeal from the order and decree herein (to the effect that their "said cross-bill be and the same is hereby dismissed out of court at the costs of the cross-complainants, Knauth, Nachod & Kuhne"), made and entered on or about January 24, 1914, do hereby make the following assignment of errors in said decree and in the proceedings of the court:

1. The District Court erred in dismissing the bill of Knauth, Nachod & Kuhne for want of equity, whether said bill be characterized as a cross-bill or as an ancillary or other original bill.

165 The court had seized and sequestered property that was alleged in their bill to belong to them and said allegations were admitted by the motions to dismiss. The Court had thereby prevented them from following said property and invoking the aid of any other tribunal in asserting their right to the same. It had then permitted the original complainants, the receivers and Joe T. Gibson, a creditor of the bankrupts, Knight, Yancey & Company, to make all persons, claiming an interest in said property, parties to the original suit and to cite them to answer their bill. It had then permitted a bond to be substituted in lieu of said property, conditioned that the property would be forthcoming to answer the final decree of the court in the suit. Being thus called upon to do so, Knauth, Nachod & Kuhne appeared and answered the bill of said complainants and were permitted by the court to file their own bill herein. Their bill has now been dismissed although they were able, as was conceded by the motions to dismiss and as the Court assumed, to trace their money into the property in question; and they

have been decreed to pay costs for doing what the Court had permitted the said original complainants to call upon them to do. It is submitted that the said order or decree, dismissing the bill of Knauth, Nachod & Kuhne with costs against them, deprives them of their property contrary to law and contrary to equity and without due process of law and denies to them the equal protection of the laws; and, therefore, that it is in contravention among other things, of Article V and Article XIV of the amendments to the constitution of the United States.

2. The District Court erred in dismissing the bill of Knauth, Nachod & Kuhne, for want of jurisdiction to entertain the same. The original suit was not brought merely against the person of the defendants, to set aside a voidable preference and for the recovery of a money judgment. It was brought to obtain the possession of certain property and, pending a determination thereof, to impound and sequester said property. Property belonging to Knauth, Nachod & Kuhne was seized and sequestered by the court and
166 they were expressly called upon to present to the court any claim they might have thereto. Even if they had not been expressly called upon to do so, they were entitled to ask a court of equity, having possession of their property, to protect and enforce their rights therein. All other tribunals were closed to them when the late Circuit Court took possession of the property and then substituted a forthcoming bond in place of the property. The decree releasing the property, after "all persons, firms or corporations who claim any right, title or interest in and to the said seventy-eight hundred (7800) bales of cotton" had been called on to present the same to the Court, is a bar to a suit to recover the same in any other court. When a court of equity acquires jurisdiction of the res of a controversy, its jurisdiction excludes that of all other tribunals. The Court acquired jurisdiction of the res by sequestration of the property. It acquired jurisdiction of the person of the defendants named in the bill of Knauth, Nachod & Kuhne when they appeared and contested said bill on the merits or on the jurisdiction of the Court over the subject matter thereof. The jurisdiction was complete both in rem and in personam.

3. The District Court erred in treating the bill of Knauth, Nachod & Kuhne as a distinctively and exclusively pure cross-bill. They filed their bill expressly as "their amended cross-bill of complaint (or their petition or bill of complaint in intervention, if the court hold that it should be so denominated)". It is clearly of an original and ancillary character, as well as of the nature of a cross-bill. Process thereon was prayed for and issued and served, on some defendants within the district and on the rest without the district as provided by a decree of the court. The defendants have appeared generally, by moving to dismiss it for want of jurisdiction and on the merits.

4. The District Court erred in holding that Knauth, Nachod & Kuhne are not parties to the original suit and that no relief was sought against them and that they could not rightly file
167 their own bill herein. That they are parties and entitled to present whatever claim they may have to the property in

question has been determined herein, as they submit, by the United States Circuit Court of Appeals, Fifth Circuit. (Knauth, Nachod & Kuhne vs. Lovell et al., 200 Fed. Rep. 403.) The relief sought against them was, in effect, that they submit any right, title and interest claimed by them in the cotton in question to the determination of the Court.

5. The District Court erred in holding that the bill of Knauth, Nachod & Kuhne is not germane or pertinent and cannot be considered a proceeding necessary to a complete determination of the litigation in the original bill. The matter in litigation in the original bill is the property, a part of which was seized and sequestered by the court, and the right, title and interest therein of all persons. Obviously the Court can not pass finally on the rights of all parties in said property without hearing and determining the rights of Knauth, Nachod & Kuhne. Any other determination will not be final and the court should not pass on the rights of any party until all parties and their rights are before it for adjudication.

6. The District Court erred in holding that the bill of Knauth, Nachod & Kuhne is not auxiliary to or a dependency on this suit and not connected with the original bill. The bill of Knauth, Nachod & Kuhne was filed for the purpose of establishing a right, title and interest in property in the possession or under the dominion and otherwise subject to the jurisdiction of the court in this suit. It is submitted that such bill is auxil*l*ary and anci*l*iary to the suit in which the court assumed jurisdiction and *taken* possession, actually or potentially, of the res of the controversy.

7. The District Court erred in holding that the property in question is in the possession of Latham & Company. The property, or a part thereof, was sequestered by the Court and the Court then substituted a forthcoming bond for the property. The bond
168 stands in lieu of the property and, in contemplation of law, the property is in the possession of the Court. The complainants, Knauth, Nachod & Kuhne, have the same right to follow their money into the bond that they had to follow it into the property. In equity the bond represents the property the same as the avails would represent it, if the Court had caused it to be sold and the avails deposited in Court, except that Latham & Company have the option to produce the cotton itself instead of its equivalent in money. Said option emphasizes the exclusiveness of the jurisdiction of the Court.

8. The District Court erred in holding that the complainants, Knauth, Nachod & Kuhne, must proceed, in some other suit, against Latham & Company, in some other jurisdiction, to establish their claim against the property for which the Court has substituted the forthcoming bond of said Latham & Company in this suit.

9. The District Court erred in holding that this is a litigation exclusively between the complainants, Knauth, Nachod & Kuhne, and the defendants Latham & Company, with which the complainant in the original bill should not be embarrassed or the record encumbered. The original complainants and also the Trustee of the bankrupts dispute the rights of Knauth, Nachod & Kuhne; and the original

complainants called upon them to present their claim to the property in question.

10. The District Court erred in holding that the original suit was brought by the Trustee of the bankrupts, Knight Yancey & Company. It was brought by the Receivers and Joe T. Gibson, an unsecured creditor of said bankrupts, suing "for himself and all other creditors who may become or make themselves parties to this proceeding." It was sustained solely in the right of a creditor to maintain it. (Frost et al. vs. Latham & Co. et al., 181 Fed. Rep. 866.) The right of Knauth, Nachod & Kuhn to make themselves parties to the proceeding and maintain their own bill is greater than
169 that of an unsecured creditor. The Trustee of said bankrupts was substituted for the original complainants after Knauth, Nachod & Kuhne had filed their bill, as they had been called upon to do.

11. The District Court erred in holding that the bill of Knauth, Nachod & Kuhne seeks no relief against the Trustee of Knight, Yancey & Company, except a discovery of matters not involved in the suit. The prayer is, among other things, that the bankrupts be adjudged to have received the money of Knauth, Nachod & Kuhne and to have held the same in trust for their benefit and that both the bankrupts and their Trustee account for said money and for any property acquired or claimed by the Trustee, into which it can be traced, including the forthcoming bond which the Court had substituted for the property in question; and that said bond be impressed with a trust or charge and that said trust be enforced by a decree for payment.

12. The District Court erred in holding that only the Trustee in Bankruptcy of Knight, Yancey & Company could maintain a suit to set aside a voidable preference by said bankrupts to Latham & Company. Either said Trustee or Knauth, Nachod & Kuhne or an unsecured creditor or one acquiring the rights of the Trustee can maintain such a suit. In fact the original suit herein was sustained in the right of Joe T. Gibson, an unsecured creditor.

13. The District Court erred in ignoring the fact that the bill of Knauth, Nachod & Kuhne sets forth also that the transfer of the property in question, by the bankrupts to Latham & Company, was void because made for the purpose of hindering, delaying and defrauding creditors and the rightful owners thereof, including Knauth, Nachod & Kuhne. Said allegations are admitted by the motions to dismiss. Certainly Knauth, Nachod & Kuhne as well as the original complainant, Joe T. Gibson, an unsecured cred-
170 itor, in whose right the original suit was sustained, have the right to maintain a suit to set aside such a transfer.

14. The District Court erred in holding the law against Knauth, Nachod & Kuhne. It is submitted that the decree of the court dismissing the bill of Knauth, Nachod & Kuhne is contrary to the admitted facts in the cause, contrary to law and contrary to equity.

Wherefore the defendants and ancillary, cross or other complaints, Knauth, Nachod & Kuhne, pray that the said decree of the District

Court against them (entered on or about January 24, 1914, dismissing their bill) be reversed.

STEVENS, McCORVEY & DEAN,
Solicitors for Knauth, Nachod & Kuhne,
Mobile, Alabama.

BRIESEN & KNAUTH,
Counsel for Knauth, Nachod & Kuhne,
25 Broad Street, New York, N. Y.

T. M. STEVENS, *of Solicitors and Counsel.*

Filed March 28, 1914.
RICHARD JONES, *Clerk.*

171 *Petition for Appeal.*

District Court of the United States, Southern District of Alabama, Southern Division.

In Equity. No. 279.

WILLIAM S. LOVELL, as Trustee in Bankruptcy of Knight, Yancey & Company, Complainants,
against
LATHAM & COMPANY, Respondents.

FRIEDRICH NACHOD and Others, Complainants,
against
EDMOND LATHAM, CHARLES LATHAM, RAOUL LATHAM, AMERICAN Surety Company, Clarence E. Frost, and William S. Lovell, as Receivers in Bankruptcy of Knight, Yancey & Company; William S. Lovell, as Trustee in Bankruptcy of Knight, Yancey & Company, and Others, Defendants.

The complainants in the last above entitled bill of complaint, Knauth, Nachod & Kuhne, conceive themselves aggrieved by the order and decree made and entered on the 24th day of January, 1914, in the above entitled cause, and do hereby appeal from said order and decree to the United States Circuit Court of Appeals for the Fifth Circuit. The grounds upon which this appeal is based are specified in the assignment of errors which is to be presented
172 and filed herewith. They pray that this appeal be allowed and that a transcript of the record, proceedings and papers upon which said order or decree was made be duly authenticated and sent to the United States Circuit Court of Appeals for the Fifth Circuit.

STEVENS, McCORVEY & DEAN,
Solicitors for Knauth, Nachod & Kuhne,
Mobile, Alabama.

BRIESEN & KNAUTH,
Counsel for Knauth, Nachod & Kuhne,
25 Broad Street, New York, N. Y.

T. M. STEVENS, *of Solicitors and Counsel.*

173 *Order Allowing Appeal.*

District Court of the United States for the Southern District of Alabama.

In Equity. No. 279.

W. S. LOVELL, Trustee of Knight, Yancey & Company, Bankrupts,
versus
LATHAM & COMPANY et al.

KNAUTH, NACHOD & KUHNE
versus
LATHAM & COMPANY et al.

Bill and Cross-bill.

This cause coming on to be heard on the petition of Knauth, Nachod & Kuhne, cross-complainants, praying an appeal to the United States Circuit Court of Appeals for the Fifth Circuit from the final decree entered herein dismissing the cross-bill on January 24th, 1914, and said cross-complainants now filing assignment of errors as required by rules of court: It is ordered by the court that said appeal be and the same is hereby allowed. It is further ordered that the bond for costs and charges to be given by said cross-complainants on said appeal be and the same is hereby fixed at Five Hundred Dollars ($500.00).

Made March 28th, 1914.

HARRY T. TOULMIN, *Judge.*

Filed and entered March 28, 1914.

RICH'D JONES, *Clerk.*

174 *Appeal Bond.*

District Court of the United States, Southern District of Alabama, Southern Division.

In Equity. No. 279.

KNAUTH, NACHOD & KUHNE, Appellants,
against
LATHAM & COMPANY and Others, Appellees.

Know all men by these presents:

That we, Knauth, Nachod & Kuhne, as principals and the National Surety Company, as surety, are held and firmly bound unto Edmond Latham, Charles Latham and Raoul Latham, composing the firm of Latham & Company; American Surety Company of New York, Clarence E. Frost and William S. Lovell, as Receivers in Bankruptcy of Knight, Yancey & Company; and William S. Lovell,

as Trustee in Bankruptcy of Knight, Yancey & Company in the full and just sum of Five Hundred — ($500.00) to be paid to the said obligees, their certain attorneys, executors, administrators and assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents.

Sealed with our seals and dated the 21st day of March, 1914.

Whereas, the District Court of the United States for the Southern District of Alabama, in a suit pending in said Court as above entitled, has lately rendered an order and decree against said
175 Knauth, Nachod & Kuhne; and said Knauth, Nachod & Kuhne are about to apply for the allowance of an appeal from said order and decree and for, a citation to said obligees, citing and admonishing them to be and appear at a session of the United States Circuit Court of Appeals for the Fifth Circuit, to be held at the City of New Orleans, Louisiana, in said Circuit, for the purpose of having said order and decree reversed, and to file such appeal, when allowed, in the clerk's office of said court.

Now, therefore, the condition of this *application* is such that if the said Knauth, Nachod & Kuhne shall prosecute their appeal to effect and answer all damages and costs, if they fail to make their plea good, then the above obligation shall be void, otherwise it shall remain in full force and virtue.

KNAUTH, NACHOD & KUHNE, [L. S.]
[L. S.] NATIONAL SURETY COMPANY,
By WM. A. THOMPSON,
Resident Vice President.

Attest:
E. M. McCARTHY,
Resident Ass't Secretary.

Affidavit, Acknowledgment, and Justification by Guarantee or Surety Company.

STATE OF NEW YORK,
County of New York, ss:

On this 21st day of March one thousand nine hundred and fourteen before me personally came Wm. A. Thompson, known to me to be the Resident Vice-President of the National Surety Company, the corporation described in and which executed the within and foregoing Bond of Knauth, Nachod & Kuhne as a surety thereon, and who, being by me duly sworn, did depose and say that he resides in the City of New York, State of New York; that
176 he is the Resident Vice-President of said Company, and knows the corporate seal thereof; that the said National Surety Company, is duly and legally incorporated under the laws of the state of New York; that said Company has complied with the provisions of the Act of Congress of August 13th, 1894; that the seal affixed to the within Bond of Knauth, Nachod & Kuhne is the corporate seal of said National Surety Company, and was thereto affixed by order and authority of the Board of Directors of

said Company; that he signed his name thereto by like order and authority as Resident Vice-President of said Company; that he is acquainted with E. M. McCarthy and knows him to be the Resident Assistant Secretary of said Company; that the signature of said E. M. McCarthy subscribed to said Bond is in the genuine handwriting of said E. M. McCarthy, and was thereto subscribed by order and authority of said Board of Directors, and in the presence of said deponent; that the assets of said Company, unencumbered and liable to execution exceed its debts and liabilities of every nature whatsoever, by more than the sum of Two Million ($2,000,000) dollars.

That Alex. McKinstry, Mobile, Alabama is agent to acknowledge service for said Company in the Judicial District wherein this bond is given.

WM. A. THOMPSON.
(Deponent's Signature.)

Sworn to, acknowledged before me, and subscribed in my presence this 21st day of March, 1914.

[L. S.]

H. E. EMMETT,
Notary Public, Kings County, No. 4.

Certificate filed in New York County, No. 2.

STATE OF NEW YORK,
County of New York, ss:

On this 21st day of March, 1914, before me personally came Wilhelm Knauth, to me known and known to me to be a member of the firm of Knauth, Nachod & Kühne, one of the parties described in and which executed the foregoing instrument, and he per-
177 sonally acknowledged to me the execution thereof as the act and deed of his said firm, Knauth, Nachod & Kühne.

[L. S.]

JOSEPH TISCHLER,
Notary Public, New York County:

The foregoing bond is hereby approved, both as to form and manner of execution and as to the sufficiency of the surety therein.

Dated this 28th day of March, 1914.

HARRY T. TOULMIN,
United States District Judge.

Filed March 28, 1914.
RICHARD JONES, *Clerk.*

Citation.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to William S. Lovell, as Trustee in Bankruptcy of Knight, Yancey & Company; Clarence E. Frost and William S. Lovell, as Receivers in Bankruptcy of Knight, Yancey & Company; Latham & Company, a partnership composed of Edmond Latham, Charles Latham, and Raoul Latham; American Surety Company of New York, Greeting:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Fifth Circuit, within thirty (30) days from the date hereof, pursuant to an appeal allowed by the District Court of the United States for the Southern District of Alabama, in Equity Cause No. 279 wherein W. S. Lovell as Trustee in Bankruptcy of Knight, Yancey & Company et al. are complainants, and Latham & Company et al. are defendants, and wherein Knauth, Nachod & Kuhne are cross-complainants and Latham & Company et al. are cross-defendants, and wherein Knauth, Nachod & Kuhne are appellants and you the said William S. Lovell as Trustee in Bankruptcy of Knight, Yancey & Company; Clarence
178 E. Frost and William S. Lovell as Receivers in Bankruptcy of Knight, Yancey & Company; Latham & Company a partnership composed of Edmond Latham, Charles Latham, and Raoul Latham; and American Surety Company of New York, are appellees, to show cause, if any there be, why the judgment and decree rendered by said District Court in your favor on January 24th, 1904, as mentioned in said appeal, should not be corrected and full and speedy justice done to the parties in that behalf.

Witness Honorable Harry T. Toulmin, Judge of the District Court of the United States for the Southern District of Alabama, and the seal of said court, at Mobile, Alabama, this 28th day of March 1914.

[SEAL.] HARRY T. TOULMIN,
U. S. Judge, Southern District of Ala.

Attest:
RICH'D JONES,
Clerk U. S. District Court,
Southern District of Ala.

We hereby accept service of the foregoing citation and acknowlerge receipt of a copy thereof this 31st day of March 1914.

JOS. C. RICH,
J. GAILLARD HAMILTON,
Solicitors and of Counsel for William S. Lovell, as Trustee in Bankruptcy of Knight, Yancey & Company, and Clarence E. Frost and William S. Lovell, Receivers in Bankruptcy of Knight, Yancey & Company.

We accept service of the foregoing citation and acknowledge receipt of a copy thereof this 2d day of April A. D. 1914.

HOWE, FENNER, SPENCER & COCKE,
Solicitors and of Counsel for Latham & Company, a Partnership Composed of Edmond Latham, Charles Latham, Raoul Latham, and American Surety Company.

Filed April 3rd, 1914.
RICH'D JONES, *Clerk.*

179 *Order of Enlargement.*

District Court of the United States, Southern District of Alabama, Southern Division.

In Equity. No. 279.

WILLIAM S. LOVELL, as Trustee in Bankruptcy of Knight, Yancey & Company, Complainant,
against
LATHAM & COMPANY, Defendants.

FRIEDRICH NACHOD and Others, Complainants,
against
EDMOND LATHAM and Others, Defendants.

This cause came on to be heard at this time on the petition attached and was submitted by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged and decreed as follows, viz:

That the time for the printing, certification and filing of the transcript of the record upon the appeal herein, allowed March 28, 1914, be and the same hereby is extended for the period of thirty days from the 27th day of April, 1914.

Dated April 27, 1914.

DAVID D. SHELBY,
United States Circuit Judge.

180 *Petition for Enlargement.*

District Court of the United States, Southern District of Alabama, Southern Division.

In Equity. No. 279.

WILLIAM S. LOVELL, as Trustee in Bankruptcy of Knight, Yancey & Company, Complainant,
against
LATHAM & COMPANY, Defendants.

FRIEDRICH NACHOD and Others, Complainants,
against
EDMOND LATHAM and Others, Defendants.

STATE OF NEW YORK,
County of New York, ss:

I, George T. Hogg, being duly sworn, say:

I am one of counsel (with Briesen & Knauth, New York, N. Y.) for the appellants, Knauth, Nachod & Kuhne, on the appeal herein, allowed March 28, 1914. On April 13, 1914, I served a præcipe, pursuant to Rules 75-76 of the present Equity Rules, on Messrs. Rich & Hamilton, solicitors for appellees Receivers and for Appellee Trustee, Mobile, Alabama, and on Messrs. Howe, Fenner, Spencer & Cocke, solicitors for appellees Latham & Company and American Surety Company of New York, New Orleans, La., through the Post Office, by depositing a copy thereof in the mail for each of said firms respectively, each copy being properly inclosed in a sealed and post-paid envelope directed to each of said firms at its said address
181 respectively. Neither copy of said præcipe has been returned and I am informed thereby and believe that both were delivered to said firms respectively. I also inclosed to said Howe, Fenner, Spencer & Cocke the original præcipe and a request for an admission of service and that said original be forwarded to said Rich & Hamilton to sign the admission of service. Request was also made that said Rich & Hamilton sign the admission of service, when received from said Howe, Fenner, Spencer & Cocke and send it to the Clerk of the United States District Court, Mobile, Alabama. Said Briesen & Knauth duly received the following letter in answer to said request:

"NEW ORLEANS, April 15, 1914.

Messrs. Briesen & Knauth, 25 Broad Street, New York City.

GENTLEMEN: * * * Our Mr. Spencer, who has had exclusive charge of this matter, is at present absent from the City. We expect him to be back within the next four or five days and we venture to hope that you will allow us to postpone action on this matter until his return.

Yours very truly,

HOWE, FENNER, SPENCER & COCKE."

The appellants have not heard from said solicitors since the receipt of said letter and are ready to print the record and to have it in type in a few days after they learn the pleasure of the appellees. The thirty days' time from the allowance of the appeal, if that be the period under the present practice, is about to expire and the appellants ask for an order extending the time for printing and filing the transcript of record on appeal.

GEO. T. HOGG.

Sworn to before me this 25th day of April, 1914.
[L. S.] FRITZ ZIEGLER, JR.,
Notary Public, Richmond County.

Certificate filed in New York County.

182 *Certificate.*

UNITED STATES DISTRICT COURT,
Southern District of Alabama, ss:

I, Richard Jones, clerk of said court, do hereby certify that the foregoing is a true and correct transcript of the record and proceedings in this court in equity in the cause therein set forth which record remains on file in my office as such clerk in said cause, and that the same constitutes the record and proceedings under the foregoing citation on appeal.

In testimony whereof, I have hereto set my hand and affixed the seal of said court, at the city of Mobile, Alabama, this the 21st day of May, 1914.

[SEAL.] RICHARD JONES, *Clerk.*

183 That thereafter, the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:

Argument and Submission.

Extract from the Minutes of January 6, 1915.

No. 2651.

KNAUTH, NACHOD & KUHNE
versus
LATHAM & COMPANY et als.

On this day this cause was called, and, after argument by T. M. Stevens, Esq., and George T. Hogg, Esq., for appellants, and Charles Payne Fenner, Esq., and Augustus Benners, Esq., for appellees, was submitted to the Court.

Opinion of the Court.

Filed January 18, 1915.

184 United States Circuit Court of Appeals, Fifth Circuit.

No. 2651.

KNAUTH, NACHOD & KUHNE, Appellants,
vs.
LATHAM & COMPANY et al., Appellees.

Appeal from the District Court of the United States for the Southern District of Alabama.

Knight, Yancey & Company, large dealers in spot cotton in Decatur, Alabama, having become seriously embarrassed, involuntary bankruptcy proceedings were filed against them in the Northern District of Alabama, and William S. Lovell and Clarence E. Frost were appointed temporary Receivers. Alleging that Latham & Company, a cotton firm, domiciled and doing business in Havre, France, had, by delivery to them of a large amount of cotton, received
185 an unfair preference from Knight, Yancey & Company, Frost and Lovell filed their bill in the Southern District of Alabama, against that firm to recover about forty-two hundred (4200) bales of cotton then in process of shipment by Knight, Yancey & Company to Latham & Company, and at that time located on a steamship wharf in the City of Mobile. The Receiver's bill was subsequently amended by adding an allegation, or information and belief, that there were other persons than Latham & Company who claimed some right, title and interest in the cotton in question, and praying that all persons, firms or corporations who claimed any right, title or interest in and to said forty-two hundred (4200) bales of cotton be made party defendants to the bill and be cited by publication to answer the bill.

After obtaining the leave of court to that effect, the appel-
186 lants, presumably in pursuance of the invitation so extended, filed an answer and also what they denominated a cross-bill or bill of intervention. To this bill Latham & Company and the American Surety Company filed demurrers, and William S. Lovell, who had been granted leave to prosecute the suit as trustee, filed a motion to strike from the files. Before hearing was had on these matters, the appellants filed an amended cross-bill and thereafter the matter coming on to be heard on a motion of William S. Lovell, Trustee to strike said amended cross-bill from the files, the District Court so ordered. Thereafter an appeal was taken by Knauth, Nachod & Kuhne to this court, and it was here held that the procedure adopted to secure the dismissal of the cross bill was not the proper procedure. See opinion on former appeal, 200 Federal Reporter, 403.
187 The opinion of the trial court will be found reported in 211 Fed. Rep. 374, to which reference is made for more complete statement.

Stevens, McCorvey & Dean, and Briesen & Knauth and George T. Hogg, for the Appellants.

Walker B. Spencer, Charles Payne Fenner, Philip S. Gidiere, and Esmond Phelps for Latham & Company and American Surety Company.

Percy, Benners & Burr and Rich & Hamilton for the Trustee in Bankruptcy.

Before Pardee, Circuit Judge; Maxey and Foster, District Judges.

Memorandum Opinion of the Court by Maxey, District Judge.

The bill filed by the trustee in bankruptcy was merely to set aside an alleged preferential transfer of cotton made by the bankrupts, Knight, Yancey & Company, to Latham & Company. The
188 suit was instituted in the Southern District of Alabama and the original bankruptcy proceeding to have Knight, Yancey & Company adjusted bankrupts was brought, and is now pending, in the Northern District of that state. The adjudication of bankruptcy in the latter court brought the property of the bankrupts wherever situated into custodia legis and that court thus acquired the full right to administer the estate. Thus it was said by the Supreme Court in Lazarus v. Prentice, 234 U. S. at page 266:

"The filing of the petition and adjudication in the bankruptcy court in New York brought the property of the bankrupts wherever situated into custodia legis, and it was thus held from the date of the filing of the petition, so that subsequent liens could not be given or obtained thereon, nor proceedings had in other courts to reach the property, the court of original jurisdiction having acquired the full right to administer the estate under the bankruptcy law. Mueller v. Nugent, 184 U. S. 1; Acme Harvester Co. v. Beekman Lumber Co., 222 U. S. 300."

189 Hence the appellants had no place in the suit instituted by the trustee merely to set aside a preferential transfer. If as

claimed they may impress a trust in their favor upon any of the assets of the bankrupts in the hands of the trustee no reason is perceived why they may not proceed in the court of original jurisdiction. In any event they will not be permitted to intervene in an ancillary suit, brought by the trustee, the sole purpose of which is to collect assets of the bankrupt and transfer them to the proper court for administration.

Upon the hearing of the motion the trial court dismissed, without qualification, the cross-bill or petition of intervention filed by the appellants.

The order of dismissal should be so amended as to show that the bill or petition is dismissed without prejudice, and as thus
190 amended it is affirmed.

Judgment.

Extract from the Minutes of January 18, 1915.

No. 2651.

KNAUTH, NACHOD & KUHNE
versus
LATHAM & COMPANY et als.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Southern District of Alabama, and was argued by counsel;

On consideration whereof, It is now here ordered, adjudged and decreed by this Court, that the order of dismissal of the said District Court in this cause be, and the same is hereby so amended as to show that the bill or petition is dismissed without prejudice, and, as so amended, the said order of dismissal be, and the same
191 is hereby, affirmed;

It is further ordered, adjudged and decreed that the appellants, Knauth, Nachod & Kuhne, and the surety on the appeal bond herein, National Surety Company, be condemned, in solido, to pay the costs of this cause in this Court, for which execution may be issued out of said District Court.

192 *Petition for Rehearing.*

Filed February 8, 1915.

United States Circuit Court of Appeals, Fifth Circuit.

No. 2651.

KNAUTH, NACHOD & KUHNE, Appellants,
against
LATHAM & COMPANY and Others, Appellees.

To the above Court:

The petition of the appellants, Knauth, Nachod & Kuhne, respectfully shows that the appellants feel aggrieved by the decision of the appeal herein and are advised that this is a case in which they may with propriety request a re-hearing, to the end that the Court may consider the grounds on which the request is made and, if it agree that a re-hearing is proper, grant the same. The grounds, on which a re-hearing is requested, are as follows:

1. The proposition that Knauth, Nachod & Kuhne were deprived of the right to follow their money into the cotton in question in the Southern District of Alabama, because of the bankruptcy proceedings in the Northern District of Alabama, is not sustained by the case cited in the Court's memorandum of opinion and is contrary to law.

Said right existed prior to bankruptcy proceedings and the
193 law preserved it and the Trustee in Bankruptcy took subject thereto.

2. The cotton in question is not a part of the bankrupt estate. It was transferred by the bankrupts to Latham & Company. The Trustee will be entitled to it only in case he succeed in setting aside the transfer on the ground that it was a voidable preference as the same is defined by the Bankruptcy Act. The bill of the appellants should not be dismissed until it be determined that the Trustee is to recover the cotton in question, even on the theory set forth in the Court's memorandum of opinion. Until then the property will not be in custodia legis of the Bankruptcy Court and that Court will have no jurisdiction over it.

3. The suit of the Trustee is not merely to set aside a preferential transfer. It is also a suit to impound and sequester the property in question, until said transfer can be set aside, and then to recover the possession thereof. The court below impounded and sequestered the property in question and that carried with it the jurisdiction and duty to hear and determine the rights of the appellants therein.

4. The court below duly granted a decree permitting the appellants to file their bill. No application to vacate said decree was made and it remains in force. Quite apart from the fact that the appellants had been made parties and called upon to answer, as unknown claimants of the property impounded and sequestered, said permission to file their bill admitted them to the suit and entitled them to have their claim heard and determined upon its merits.

5. Latham & Company are not purchasers in good faith or for value and the appellants have the same right to follow the property in question into the Southern District of Alabama and impress a trust or charge upon it, as the proceeds of their money, as if it remained in the hands of the bankrupts in the Northern District of Alabama.

194 Wherefore the appellants submit, with great deference, that the Court has misapprehended the facts of the case and the law applicable to the same; and they respectfully pray that a rehearing of the appeal herein be granted.

Dated February 1, 1915.

GEORGE T. HOGG,
Of Counsel for Appellants.

STEVENS, McCORVEY & McLEOD,
Solicitors and Counsel for Appellants.

503 City Bank Building, Mobile, Alabama.

BRIESEN & KNAUTH,
Counsel for Appellants.

25 Broad Street, New York, N. Y.

ANTONIO KNAUTH,
THOMAS M. STEVENS,
Of Counsel.

Certificate of Counsel.

I, George T. Hogg, of counsel for the appellants herein, do hereby certify that, in my judgment, the foregoing petition for a re-hearing herein is well founded; and that the same is made in good faith and not for the purpose of delay.

GEORGE T. HOGG.

195 *Order Denying Rehearing.*

Extract from the Minutes of February 22, 1915.

No. 2651.

KNAUTH, NACHOD & KUHNE
versus
LATHAM & COMPANY et al.

Ordered that the petition for rehearing filed in this cause be, and the same is hereby, denied.

Assignment of Errors.

Filed March 1, 1915.

United States Circuit Court of Appeals, Fifth Circuit.

No. 2651.

KNAUTH, NACHOD & KUHNE, Appellants,
against
LATHAM & COMPANY and Others, Appellees.

The appellants, Knauth, Nachod & Kuhne, (being about to
196 ask for the allowance of an appeal to the Supreme Court of the United States from the order of this court, made and entered herein on or about January 18, 1915, so far as the same affirms the order or decree of the court below) hereby make the following assignment of errors in the said order and in the proceedings of the court:

1. The above Circuit Court of Appeals erred in merely amending and then affirming as amended the order or decree of the United States District court for the Southern District of Alabama. Said order or decree should have been reversed.

2. The above Circuit Court of Appeals erred in proceeding upon the theory that the original suit in said District Court (by the receivers and a creditor of the bankrupts, Knight, Yancey & Company) was merely to set aside a preferential transfer; and
197 upon the theory that the property in question was in custodia legis of the bankruptcy court in the Northern District of Alabama; and upon the theory that the case of Lazarus vs. Prentice (234 U. S. 263) is an authority applicable to this case; and upon the theory that the appellants had no place in said original suit; and upon the theory that the appellants had no right to intervene and file their cross-bill (or whatever it should be denominated) in said original suit.

3. The United States District Court for the Southern District of Alabama erred in dismissing the bill of the appellants, Knauth,

Nachod & Khune, either for want of equity or for want of jurisdiction, whether said bill be characterized as a cross-bill or as an
198 ancillary or other original bill. The appellants hereby refer to and make a part hereof their assignment of errors in said District Court, with the same force and effect as if the same were herein fully and at length set forth.

Wherefore the appellants, Knauth, Nachod & Kuhne, pray that the said order of the above Circuit Court of Appeals (made and entered herein on or about January 18, 1915) be reversed, so far as the same affirms the order or decree of the United States District Court for the Southern District of Alabama dismissing the appellants' cross-bill (or whatever it should be denominated). They also pray that the said order or decree of said District Court be reversed.

(Signed) GEORGE T. HOGG,
Of Counsel for Appellants.

STEVENS, McCORVEY & McLEOD,
Solicitors and Counsel for Appellants.

503 City Bank Building, Mobile, Alabama.

199 BRIESEN & KNAUTH,
Counsel for Appellants.

25 Broad Street, New York, N. Y.

ANTONIO KNAUTH,
THOMAS M. STEVENS,
Of Counsel.

Clerk's Certificate.

UNITED STATES OF AMERICA:

United States Circuit Court of Appeals, Fifth Circuit.

I, Frank H. Mortimer, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 183 to 199 next preceding this certificate contain full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion of the United States Circuit Court of Appeals for the Fifth Circuit, in a certain cause in said Court, numbered 2651, wherein Knauth, Nachod & Kuhne are ap-
200 pellants, and Latham & Company, and others, are appellees, as full, true and complete as the originals of the same now remain in my office.

I further certify that the pages of the printed record numbered from 1 to 182 are identical with the printed record upon which said cause was heard and decided in the said Circuit Court of Appeals.

In testimony whereof I hereunto subscribe my name and affix the seal of the said Circuit Court of Appeals, at my office in the City

of New Orleans, Louisiana, in the Fifth Circuit, this 4th day of March, A. D. 1915.

[Seal United States Circuit Court of Appeals, Fifth Circuit.]

FRANK H. MORTIMER,
Clerk of the United States Circuit Court of Appeals.

201 In the United States Circuit Court of Appeals for the Fifth Circuit.

No. 2651.

KNAUTH, NACHOD & KUHNE, Appellants,
vs.
LATHAM & COMPANY et als., Appellees.

I, Frank H. Mortimer, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the transcript of the record of the proceedings of this Court in the within entitled case heretofore certified by me for filing in the Supreme Court of the United States was correct and complete as the same then appeared in this Court.

In pursuance of the command of the annexed writ of certiorari, I now hereby certify that on the 6th day of May, A. D. 1915, there was filed in my office a stipulation in the above entitled case in the following words, to-wit:

"United States Circuit Court of Appeals, Fifth Circuit.

No. 2651.

KNAUTH, NACHOD & KUHNE, Appellants,
against
LATHAM & COMPANY and Others, Appellees.

It is hereby stipulated that the transcript of the record of the above entitled cause in this Court which was filed in the office of the Clerk of the Supreme Court of the United States, with the petition for the writ of certiorari which has been issued to this
202 Court herein, shall be taken as a return to said writ; and that the Clerk of the above Court may return said writ with a duly authenticated copy of this stipulation attached instead of another transcript of said record.

Dated April 30, 1915.

(Signed) GEORGE T. HOGG,
Of Counsel for Appellants.

(Signed) AUG. BENNERS,
Of Counsel for Appellees Receivers and Trustee.

(Signed) HOWE, FENNER, SPENCER & COCKE,
Of Counsel for Appellees Latham & Company and American Surety Company of New York."

I further certify that the above is a true and correct copy of said stipulation and of the whole thereof.

In testimony whereof, I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals, at the City of New Orleans, Louisiana, this 6th day of May, A. D. 1915.

[Seal United States Circuit Court of Appeals, Fifth Circuit.]

FRANK H. MORTIMER,
Clerk of the United States Circuit Court of Appeals for the Fifth Circuit.

203 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable the Judges of the United States Circuit Court of Appeals for the Fifth Circuit, Greeting:

[Seal of the Supreme Court of the United States.]

Being informed that there is now pending before you a suit in which Knauth, Nachod & Kuhne are appellants, and Latham & Company et al. are appellees, No. 2651, which suit was removed into the said Circuit Court of Appeals by virtue of an appeal from the District Court of the United States for the Southern District of Alabama, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Circuit Court of Appeals and removed into the Su-
204 preme Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the twenty-eighth day of April, in the year of our Lord one thousand nine hundred and fifteen.

JAMES D. MAHER,
Clerk of the Supreme Court of the United States.

205 [Endorsed:] File No. 24,652. Supreme Court of the United States, October Term, 1914. No. 908. Knauth, Nachod & Kuhne vs. Latham & Company et al. Writ of Certiorari. U. S. Circuit Court of Appeals. Filed May 4, 1915. Frank H. Mortimer, Clerk.

206 [Endorsed:] File No. 24,652. Supreme Court U. S., October term, 1915. Term No. 420. Knauth, Nachod & Kuhne vs. Latham & Company et al. Writ of certiorari and return. Filed May 10, 1915.